

## UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF ARIZONA

Austin Flake and Logan Flake, )  
Plaintiffs, ) No. CV 15-1132-PHX-NVW  
vs. )  
Joseph Michael Arpaio, ) Phoenix, Arizona  
et al., ) December 14, 2017  
Defendants. ) 2:00 p.m.  
)

BEFORE: THE HONORABLE NEIL V. WAKE, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS-PARTIAL

*(Closing Arguments)*

**APPEARANCES:**

For the Plaintiffs:

MONTOYA LUCERO & PASTOR PA  
By: Stephen G. Montoya, Esq.  
By: Richard J. Trujillo, Esq.  
3200 North Central Avenue, Suite 2550  
Phoenix, Arizona 85012

For the Defendants:

SACKS TIERNEY PA  
By: Jeffrey S. Leonard, Esq.  
By: Evan F. Hiller, Esq.  
4250 North Drinkwater Boulevard, 4th Floor  
Scottsdale, Arizona 85251

Official Court Reporter:

Laurie A. Adams, RMR, CRR  
Sandra Day O'Connor U.S. Courthouse, Suite 312  
401 West Washington Street, Spc 43  
Phoenix, Arizona 85003-2151  
(602) 322-7256

Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared by Computer-Aided Transcription

I N D E XCLOSING ARGUMENTPAGE

By Mr. Montoya	3
By Mr. Leonard	39
By Mr. Montoya	64

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## 1           E X C E R P T E D   P R O C E E D I N G S

2           THE COURT: All right. The plaintiffs may make their  
3 opening statement -- I mean closing argument.

4           MR. MONTOYA: Thank you.

5           The greatest thing about our country, the greatest       02:00PM  
6 thing, in my opinion, about being an American, the thing that  
7 makes us lucky is that in America, to a certain extent, we can  
8 sue our government when our government violates our rights.

9           I know all you folks watch the news. And we hear       02:00PM  
10 about other countries all over the place, and most of those  
11 countries do not have that right. And that right is the  
12 foundation for every other right. We have free speech. But if  
13 the government can take away our free speech with impunity,  
14 what good is that right. I tell you, there are a lot of big  
15 businesses in America. None of them are as big as government.       02:01PM  
16 Government is the biggest power that we face in America. And  
17 our ability to hold our government to account is all we have to  
18 maintain our freedom.

19           And praise God that we're here today considering this       02:01PM  
20 issue that we have this Court, that symbol, that allows us to  
21 challenge government action. And notice how we're not  
22 challenging it before a government official, and that I'm  
23 looking at you, and this time the judge is saying I can,  
24 because you are in charge. That's the beauty of our  
25 government. And it's your duty to protect that. Remember       02:02PM

1 that.

2 You know, this case is really compelling. It's really  
3 interesting because it's easier to explain this case by  
4 thinking about what it's not about instead of what it is about.  
5 Let's talk about what this case is not about. Based on the  
6 evidence, and I will be specific, this case is not about, even  
7 though you heard Sheriff Arpaio, that's how we began, failure  
8 to provide food, water, shelter. It's not about Logan and  
9 Austin's failure to provide those dogs food or water. You  
10 heard Detective Trombi. I asked her flat out, are you saying  
11 they failed to provide the dogs food? No. I'm not saying  
12 that. Asked Steinberg, are you accusing them of failing to  
13 provide the dogs water? No, we're not saying that. Our 21  
14 felony charges are not saying that. It's not about failure to  
15 provide food. It's not about failure to provide water.

02:02PM

02:02PM

02:03PM

16 Another thing that the two law enforcement officials,  
17 both county employees, Steinberg was a county attorney when  
18 this went down. Remember, Trombi is still a county employee.  
19 Arpaio was a county employee at the time as well. Steinberg  
20 also testified, like Trombi did before her, Arpaio didn't  
21 really have a clue other than talking to the press. Remember  
22 when I asked Trombi, are you blaming Logan and Austin for the  
23 air conditioning system at her parents' house? She said, oh,  
24 no. I'm not blaming them for that. I asked Steinberg the same  
25 thing: Are you blaming these young people? They are kids to

02:03PM

02:04PM

1 me, because I am 57. Are you blaming these young people for  
2 their parents' air conditioning, their in-laws' air  
3 conditioning? No. For the alleged lack of ventilation? No.  
4 So it's not about food. It's not about water. It's not about  
5 the A/C system. It's not about the lack of ventilation. They  
6 have admitted that. You remember that. Both of the law  
7 enforcement officers who actually have knowledge of the case  
8 admitted all those things.

02:04PM

9 Another thing that this case is not about, and I tell  
10 you, the defense really wanted to make it about that. The  
11 defense really hammered, every chance they could by innuendo  
12 and other types of smears, Logan's parents. And I might have  
13 irritated you when I objected all the time. And sometimes we  
14 went before the judge and we were whispering over there and you  
15 could see us arguing. And I was watching you watch us argue.  
16 And when I was watching you watch us argue I was getting  
17 concerned that you folks were going to believe that I was  
18 trying to conceal something from you.

02:05PM

02:05PM

19 And it's true. I was. I was trying to keep out from  
20 evidence what Logan's parents did or didn't do. And I will  
21 tell you why. Because as the judge repeatedly stated over and  
22 over again, this case is not about what Logan's parents did or  
23 didn't do. Because another thing that we have to be really  
24 grateful about in this country is that guilt is individual.  
25 You cannot be charged for something that somebody else did,

02:05PM

02:06PM

1 guilt by association, family guilt, those are all principles  
2 that are alien to our criminal justice system and it's your job  
3 to keep it that way.

4 So the case isn't about failure to feed, failure to  
5 water, failure to maintain an A/C, failure to maintain a proper

<sup>6</sup> ventilation system, or what Austin and Logan's parents did, or

7 didn't do. But I tell you, that's a pretty broad universe.

8 That's what this case is really about. It's about nothing.

That's why the judge has already ruled that there was no

probable cause that these folks be indicted for 21 felony

For more information about the study, please contact Dr. Michael J. Hwang at (310) 206-6500 or via email at [mhwang@ucla.edu](mailto:mhwang@ucla.edu).

11 sources. That's another big meeting. The judge has concluded

2 that as a matter of law, that, in fact, there was no reasonable

© 2013 Pearson Education, Inc. All Rights Reserved. May not be copied, scanned, or duplicated, in whole or in part.

Journal of Oral Rehabilitation 2013; 40(12): 937-944

4      felony based on the facts of this case.

Because remember what Trombi and Steinberg also

6 testified to? Trombi, I asked her, and I had gone over this as

I reminded her in her deposition: Are you saying that Austin

9 dog Patrick, or Logan's own dog Patrick? Oh, no. I'm not

accusing them of that. Okay. Well, are you accusing them of

<sup>21</sup> knowingly putting them in harm's way? For example, suppose you

are cruising down the highway, rush hour traffic over there on

33 17 or the 19 5:00 or 4:30 it gets really bad 5:30 whatever

<sup>34</sup> See also the introduction to the present volume, and the notes to the individual articles.

15 | Page

God, that's knowingly exposing an animal to a known danger

1 because you would have to be crazy to do that in that type of  
2 traffic.

3                 However, if you let your dog walk down a country road  
4 and all of a sudden a jet comes speeding by at the speed of  
5 light and runs over your pet, that's not knowingly putting your  
6 pet in harm's way. There was no basis to conclude that the  
7 statute was violated.

8                 One of the most appalling things that you heard in  
9 this trial is Detective Trombi's remorseless, unrepentant  
10 testimony. Do you remember -- God, I hope you do -- when I  
11 asked Detective Trombi, gee, can you indict someone for a  
12 felony under the animal cruelty statute based on negligence?  
13 No. I don't know. She said she didn't know. I asked whether  
14 or not she could predicate a felony indictment under the animal  
15 cruelty statute based on recklessness. She didn't know that,  
16 either. She's been in the animal cruelty unit for nine years.  
17 She's recommending that a 20-year-old and a 21-year-old be  
18 indicted for 21 felonies and she doesn't know that. Do you  
19 really believe that?

20                 I tell you, Trombi's many things but she's not stupid.  
21 She's not. I think it's more likely that she's dishonest than  
22 she's that stupid not to have read the statute not to know what  
23 the statute that she uses to destroy people's lives means.  
24 Come on. That's reckless. That's crazy. It's her job to know  
25 that.

1           Remember Trombi also testified to you that she can't  
2 be wrong. She testified to that at her deposition, as I  
3 reminded her. She can't be wrong because her job is too  
4 important. Like for example suppose you are a sniper and you  
5 are trying to take out a bank robber who is amongst a bunch of  
6 innocent people. The sniper can't be wrong because otherwise  
7 the sniper is going to shoot down an innocent person. That's  
8 also true for a detective. The detective cannot be wrong.

02:10PM

9           Remember when Sheriff Joe testified, oh, I'm sure that  
10 my detectives consulted with attorneys during the  
11 investigation. He said that several times. And I asked him  
12 quizzically, maybe dramatically hoping you would remember right  
13 now, asked him quizzically, are you sure? He says oh, yeah,  
14 I'm sure. Then when I asked Trombi that, no, I never consulted  
15 with an attorney before my recommendation of 21 felony counts.  
16 First time I spoke to an attorney was after I made the  
17 recommendation when I hand-walked it to the county attorney's  
18 office. She hand-walked her 21 felony count recommendation to  
19 the county attorney's office.

02:11PM

20           So even though there was no urgency to filing these  
21 charges, there's never been any testimony that we must file  
22 them quickly because of some legal requirement or some factual  
23 requirement. She didn't even seek any legal advice but yet she  
24 can't tell you whether or not negligence is enough.

02:12PM

25           And I will talk about this later. But the judge has

02:12PM

1 already -- part of the judge's instructions regarding probable  
2 cause is that negligence, recklessness, imprudence is not  
3 enough for a felony. Trombi didn't even know that. When the  
4 judge asked her, why wasn't this an accident, I remember what  
5 Trombi testified: I don't know. Steinberg and Trombi both 02:12PM  
6 testified that even though they weren't responsible for failure  
7 to feed, failure to water, failure to maintain A/C ventilation,  
8 here's what they were responsible for: They knowingly put the  
9 dogs in the dog room. And because it was so small it was  
10 inherently dangerous as a matter of common sense. There's no 02:13PM  
11 reason behind that. Honestly, that is crazy. And that is also  
12 wrong for a detective or a county attorney to say in support of  
13 a 21-count felony indictment. Because guess what? Steinberg  
14 was a little bit hazy on this. When I asked her, where do  
15 these laws come from? I had to ask her several questions 02:13PM  
16 before she finally admitted that it's the legislature that  
17 writes the law.

18 Now, Your Honor, may I pull the --

19 THE COURT: You may.

20 MR. MONTOYA: I'd like help. Where should I stop? 02:14PM

21 THE COURT: Put it where everybody can see it.

22 MR. MONTOYA: Now, we've gone through this many times.  
23 I will try to be brief. Necessary shelter. The judge says,  
24 hey, in order to be guilty of a felony, you must knowingly put  
25 a dog in harm's way in reference to their shelter. Here's the 02:15PM

1 most obvious case about that that you might have heard on the  
2 news. When it's swelteringly hot in Phoenix like 117,  
3 sometimes it gets, and you have a horse outside who doesn't  
4 have any shade, that can really hammer an animal. That's  
5 failure to provide an animal shelter. When it's -- suppose you  
6 live up in the mountains of Flagstaff and you are in a blizzard  
7 and you leave your dog outside without any shelter to freeze,  
8 that's -- anyone would know not to do that. Anyone would know  
9 that's putting your dog in harm's way, leaving your horse in  
10 harm's way. That much makes sense.

02:15PM

11 But hey, listen, the testimony is unequivocal and  
12 undisputed that Logan's parents put those dogs, put dogs in  
13 that dog room, for about two years before Logan and Austin took  
14 over on June 14th. There's no evidence that any of those dogs  
15 were harmed during that time. And remember what the case is  
16 not about. It's not about the A/C or ventilation. So if  
17 something works for two years, how could someone knowingly be  
18 putting the dogs in harm's way by putting them in the dog room?  
19 There's nothing to that. That belief is just crazy. Is that  
20 negligent or reckless? Who knows. Who cares. It's  
21 irrelevant. Like the judge's instructions direct you, you need  
22 knowing or intent. You have to intend to hurt the dogs or put  
23 them in harm's way knowingly to be guilty of a felony.  
24 Everyone admits that didn't happen in this case.

02:16PM

02:16PM

02:16PM

02:17PM

1 you think they meant to hurt -- they knew that the dogs would  
2 be hurt by putting them in there? No, I don't think that. How  
3 could she deny that? They put them in there and they were fine  
4 on the 14th, 15th, 16th, 17th, 18th, 19th, and then the  
5 tragedy, the accidental tragedy, that transpired sometime the  
6 morning of the 20th. There is no evidence that my clients even  
7 came close to violating that statute.

02:17PM

8 But so that's what's missing. But let's talk about  
9 what is present. You know, Sheriff Arpaio, when I asked him  
10 whether he was seeking publicity, that is the only way to  
11 explain his behavior in this case from the very beginning, from  
12 the very beginning. Dogs die on Friday the 20th. Boy, I will  
13 tell you, Monday he's already before the press. There has been  
14 no investigation of that's been completed, and the only  
15 investigation that there was took place the 21st. Then we have  
16 the press announcement that the Maricopa County Sheriff's  
17 Office say it's a tragic accident. That was what they said.  
18 There was no evidence to the contrary.

02:18PM

19 But yet Sheriff Joe is in front of the cameras on the  
20 23rd. And what's he doing? Even though he said, remember he  
21 swore, and this is why you should not believe him. Do not  
22 believe Sheriff Arpaio because he repeatedly and demonstrably  
23 lied to you right from the get-go. Did you have a press  
24 conference the 23rd, I asked him? Oh, no. No. Didn't do it.  
25 Are you sure? Yes, I'm sure. Then I had these pictures that I

02:18PM

02:19PM

02:19PM

1 showed him.

2 Permission. Admitted into evidence.

3 THE COURT: You don't need permission.

4 MR. MONTOYA: Understood.

5 Remember those? Those were first up. And there he is  
6 pictured, holding, of all things, pictures of the dead dogs,  
7 paging through them. "Photos of the dogs found dead" reads the  
8 caption on the 23rd.

02:19PM

9 Now, I tell you, what is the best way to inflame  
10 people? What is the best way to get attention? Parade  
11 pictures of dead animals. Think of what attention a law  
12 enforcement officer would get if he held a press conference  
13 holding pictures of a bunch of dead bodies, human bodies.

02:20PM

14 People would be aghast. It would be outrageous. But because  
15 they were only dogs, somehow it wasn't as bad. I think it was  
16 very bad. I will tell you one thing. It unequivocally  
17 demonstrates that he was doing it for attention. Because  
18 otherwise, if he's not doing it for attention, and as he  
19 claimed falsely, oh, I just wanted to inform the public.

02:20PM

20 Here's how you inform the public: Hey, listen, 21 dogs died  
21 out in Gilbert. We started our investigation on Saturday, the  
22 21st, and we're going to continue it. Because our  
23 investigation is, at this early juncture, incomplete I don't  
24 have a lot to report to you folks. We're going to try to  
25 complete our investigation promptly. And when we do, if

02:21PM

02:21PM

1 appropriate, we'll let you know. That's what would have been  
2 appropriate for a legitimate public communication from the  
3 sheriff. That's not what he did. What did he do? He showed  
4 the pictures of the dogs. That is inflammatory.

5 And he simultaneously -- first of all, his own news 02:21PM  
6 release contradicts his sworn testimony to you. He held a  
7 press conference. He denied it under oath. Even though, Lord  
8 knows, I didn't write that. My name's not on it. That's what  
9 Arpaio said, that he had a press conference, yet he denied it  
10 to you at the beginning of his testimony. And I will tell you 02:22PM  
11 the reason why he denied it, because his real purpose in taking  
12 such a great interest in this case was to attract publicity to  
13 himself like he denied. But remember, a federal judge actually  
14 had a trial, a mini-trial, regarding whether or not Sheriff Joe  
15 did things for purposes of publicity, and the judge found him 02:22PM  
16 guilty. So I'm not the only one saying that. Judge Murray  
17 Snow said that. And Sheriff Joe had the right to be heard in  
18 that case just like he did in this case.

19 You know, another thing about Sheriff Joe, notice how 02:23PM  
20 he doesn't take responsibility for his acts. Even though he  
21 got in front of the press and said all kinds of things, he  
22 didn't want to take any responsibility. Even though he claimed  
23 rhetorically the buck stopped with him, he took no  
24 responsibility. He never apologized to these kids. And yes,  
25 do see him right now? He's being sued. Where is he? He will 02:23PM

1 not come and show his face before this jury because he doesn't  
2 care. He doesn't have the courage to come back. Once he got  
3 off the witness stand he left the courtroom, and you haven't  
4 seen him since. That shows that he doesn't care, that he  
5 doesn't accept responsibility. His testimony was certainly  
6 remorseless in addition to being false.

02:23PM

7 Look, June 23rd, not even two days, not even three  
8 days after the dogs died, he's already saying that the  
9 caretakers' version of what they died of is highly suspect.  
10 And what is he doing? The animals were being overseen by their  
11 relatives, Logan and Austin Flake. Then the evidence showed  
12 that right after the name was released, the Flake name was  
13 released, the case mushroomed into the media. Of course it's  
14 going to mushroom in the media when you have Sheriff Arpaio,  
15 who is a national and international celebrity, parading  
16 pictures of dead dogs to the press. Of course the media is  
17 going to pick up on it. This shows that Sheriff Joe was doing  
18 this for purposes of publicity.

02:24PM

02:24PM

19 Now, what else did Sheriff Joe do? You know, I will  
20 go through them quickly. This isn't the only press conference  
21 he had. And this is Exhibit 4. You will have it in the jury  
22 room. But also, remember he sent out a government helicopter  
23 to search for Valor, the dog that ran away? That's a  
24 publicity. A government, a police helicopter searching for a  
25 missing dog? When have you ever heard of that before? And he

02:25PM

02:25PM

1 bragged about it. Launched his helicopter to aid ground  
2 search. So not only did he do it, he could say, oh, I just  
3 love dogs a lot. What did you do to help physically? Nothing.  
4 Sent a helicopter out and bragged about it in the news. And he  
5 also brags that he's going to attend a Saturday vigil for the  
6 deceased dogs. Law enforcement officers are supposed to be  
7 neutral, but yet he's reaching out to these dog owners for  
8 purposes of publicity like he was accused of by his executive  
9 chief.

02:26PM

10 Then what does he do? Exhibit Number 5, this is the  
11 press release he released on July 9th when Sheriff Joe went to  
12 the Hugheses' home for the execution of the search warrant.  
13 And remember Trombi testified that when she saw Sheriff Joe at  
14 the Hugheses' home during the execution of the search warrant  
15 she didn't see him do anything other than talking to the press.

02:26PM

16 He didn't do any law enforcement work. I asked him what were  
17 you doing there besides talking to the press? He said  
18 supporting my people. Come on. Supporting them how? How do  
19 you support your people if all you do is talk to the press? I  
20 know how to support people. I have people I work with. I will  
21 tell you how I support them, elbow to elbow, working with them.  
22 That's how your bosses probably support you, by working with  
23 you side by side, helping you, watching you do your job. How  
24 do you support somebody by talking to the press? You don't.

02:27PM

25 But yet, first news on this. Would this have made

02:27PM

1 news? Yeah. First news is it was a tragic accident. And  
2 let's talk about that, because the defense focused upon that a  
3 lot. Hey, guess what? Do we deny that this would have  
4 attracted public attention even without Sheriff Joe? Of course  
5 not. 21 dogs died. Their owners were hurt. Their owners  
6 wanted it investigated. Would have there been publicity? Yes.  
7 That's like saying, hey, would there have been a fire if I  
8 decided to start my backyard barbecue? Yeah. However, if  
9 somebody dumped it over and poured fire over it, it's going to  
10 be a much bigger fire. And that's what happened in this case.  
11 Would there have been publicity? Sure. Would it have died  
12 down but for Sheriff Joe releasing a bunch of press releases  
13 including pictures of the dead dogs? It would have died down.  
14 I will tell you why it didn't die down, because Sheriff Joe  
15 wouldn't let it die down, and then these kids were indicted.

02:28PM

02:28PM

02:28PM

16           22 minutes. September 9th, 2014. What did Sheriff  
17 Joe do? Even though he wasn't doing it for purposes of  
18 publicity, he claims, he gets before the press. It makes state  
19 news, national news, then international news. Quote, "We're  
20 recommending to the county attorney that 21 felony charges be  
21 pursued against the four suspects in this investigation." This  
22 is the film that I started the case with. Sheriff Joe says,  
23 "I'm very confident that we have the proper evidence. And I  
24 will tell you what, there is a law. Anyone knowingly or  
25 intentionally, and I'm going to give you the crux of this case,

02:29PM

02:29PM

1 that neglects, you know, animal cruelty. And the key here is  
2 the failure to provide, food, water, and shelter." He gets up  
3 and he speaks to the press for 22 minutes, says that he has the  
4 proper evidence that my clients have perpetrated 21 serious  
5 felonies. But yet when I ask him for one fact after years, one  
6 fact that supported his claim that he was very confident, quote  
7 unquote, that he had the proper evidence, quote, unquote, that  
8 my clients had perpetrated 21 felonies, he had nothing. That  
9 didn't -- and how do you communicate? He says, oh, I was  
10 trying to inform the public. Yeah. He was trying to inform  
11 the public. He was trying to inform the public of something  
12 that would create a lot of attention. He wasn't trying to give  
13 them factual information about what my clients did wrong  
14 because he never gave them anything specific. And even though  
15 everyone admitted that the case wasn't about food, water, or  
16 air conditioning, that's what he talked about.

17 So the evidence demonstrates that Sheriff Joe was in  
18 it for the publicity. That's further evidenced by what  
19 happened when the case was dismissed. When the case was  
20 dismissed, what did Sheriff Joe do? Once again, that was the  
21 short video that you saw after the charges had been dismissed.  
22 What did he do? He got up before the cameras again and he said  
23 that he was confident the case would be re-filed. That shows  
24 that he had a commitment to prosecute this case even after the  
25 county attorney threw it out. That also shows that he could

02:30PM

02:30PM

02:31PM

02:31PM

02:31PM

1 not resist taking every opportunity that he possibly could to  
2 derive publicity from this case on the backs of my clients.

3 That's not what a law enforcement officer is supposed to do.

4 That's not stopping crime or investigating crime. That's  
5 actually just inflaming the public regarding two individuals  
6 that he doesn't have any evidence regarding, two people that  
7 not only are innocent because there's a presumption of  
8 innocence, but the judge has also ruled there was no probable  
9 cause as a matter of law. And guess what? He's not the first  
10 one to conclude that effectively or in fact, because that's  
11 what Bill Montgomery also concluded.

02:32PM

02:32PM

12 So Sheriff Arpaio, his emotional energy launched this  
13 case. And it went as far as it did based upon Sheriff Arpaio's  
14 emotional energy. Trombi, she testified that she briefed  
15 Arpaio more about this case than any other case she had ever  
16 worked on. I think I recollect her testifying that she briefed  
17 Sheriff Arpaio seven times regarding the case. I'm absolutely  
18 certain that she testified that she briefed him regarding this  
19 case more than any other case. And she even was witness and  
20 helped him prepare for one press conference. When I asked her  
21 which press conference that was, she claimed she couldn't  
22 remember.

02:33PM

02:33PM

23 Let's talk a little bit more about Trombi. Trombi was  
24 a very incredible witness. Trombi was the lead investigator.  
25 She also -- I asked her, do you remember, you know, Trombi

02:34PM

1 couldn't even get some basic facts right, things that should  
2 have been immediately admitted. For example, do you remember  
3 when I asked Trombi, hey, you know, Arpaio is the sheriff over  
4 there, right? Isn't he your boss, I don't know. I think he  
5 is. Well, I guess he is. Come on. Every law enforcement  
6 officer at the county is a subordinate of the sheriff. He runs  
7 the place. He's the one in charge. To deny, to be a deputy  
8 sheriff and deny the sheriff is your boss, that's ridiculous.

02:34PM

9                   Trombi also lied repeatedly, and she also clung to her  
10 lies. And I will tell you why you should conclude that they  
11 are lies rather than just mistaken beliefs, because they really  
12 flew in the face of reality. And she didn't learn, claimed not  
13 to have learned. When the county attorney threw her  
14 recommended 21 felonies out did she learn from that? No. When

02:34PM

15 the judge said that there was no probable cause, did she learn  
16 from that? No. She learned nothing. Would you do anything  
17 differently, I asked her. Remember that was one of my last  
18 questions of her. No. She learned nothing, even though her  
19 indictment was thrown out by Montgomery. Her indictment was

02:35PM

20 deemed to have no probable cause by this very court. But she  
21 lied way worse than that. She claimed, over and over again,  
22 the SRP records, this is what she told Steinberg. She admitted  
23 she told Steinberg that. Steinberg admitted Trombi told her  
24 that. She claimed that the SRP records -- by the way, this  
25 actual document is plaintiffs' Exhibit Number 20. It will go

02:35PM

02:36PM

1 to the jury room with you.

2 She claimed that the SRP records showed the air  
3 conditioning unit in the dog room was working all night. That  
4 is absurd. I tell you, I'm not a rocket scientist. I don't  
5 know if Ms. Trombi is. I do know this. She's not stupid. And 02:36PM  
6 I asked her, well, hey, see all these peaks and valleys that  
7 suddenly go dormant on the 20th unlike any other day? Doesn't  
8 that kind of support Austin and Logan's claim that the A/C  
9 broke? No. It doesn't support it. She testified over and  
10 over again that the SRP records demonstrated that the A/C in 02:37PM  
11 the dog room worked all night. She didn't say it was  
12 inconclusive. You could say it was inconclusive. Hey, I don't  
13 know. I didn't understand these records. I don't know.

14 She could also say, hey, you know what? I make  
15 mistakes. I'm human. I initially didn't understand these 02:37PM  
16 records when the case was being presented to the Grand Jury.  
17 That's why I told the prosecutor that these records show the  
18 A/C in the dog room was open all night. But now I know because  
19 after I got the defense motion and read it, and after  
20 Montgomery dismissed the case, and after the judge said there 02:38PM  
21 was no probable cause, I understood it. So now I have it  
22 straight.

23 But what did she continue to say? No. These still  
24 show that the A/C in the dog room was working all night. That  
25 is a lie. And that is ridiculous. But do you know why she had 02:38PM

1 to say that? Because she told Steinberg that and she told the  
2 Grand Jury that. And I'm telling you, for a law enforcement  
3 officer to admit they lied to a Grand Jury or made a  
4 misstatement to a Grand Jury or made a big material factual  
5 misstatement to a Grand Jury, that's something that puts a  
6 bullet into a law enforcement officer's career. You do the  
7 math on that. She couldn't take back what she told the Grand  
8 Jury, what she told Steinberg. It could have hammered her  
9 career so she decided to double down on it, even when it became  
10 ridiculous.

02:38PM

11           Oh, and remember she testified, oh, there was still  
12 some electricity being used and there was still a little bit of  
13 peaks and valleys if you want to elevate them to that. Oh,  
14 Yeah. Well, gee, did they say that the A/C in the whole place  
15 or the electricity in the whole house was turned off? No. The  
16 A/C in the east side of the house was still on. There was  
17 testimony there was two refrigerators still on. Lights were  
18 still on. The clock was still on. The fans were still on.  
19 The wall A/Cs were still on. That would explain this.

02:39PM

20           Trombi got the defense motion. She looked at the  
21 defense motion. You should look at it, too. It contains all  
22 kinds of interesting information. One of the things it  
23 contains, remember when Steinberg testified that she talked to  
24 someone from SRP? Remember that? But she couldn't remember  
25 what he said or what his name was. Steinberg also testified,

02:40PM

1 oh, I spoke to George Hogge. I just can't remember what he  
2 said. Well, listen, the paper that convinced Bill Montgomery  
3 to throw out the case actually has a statement from someone at  
4 SRP. And he doesn't say the records show it was working all  
5 night. To the contrary. He says that it went down by 37  
6 percent. And another expert in that paper also said --  
02:40PM

7 MR. LEONARD: Objection, Your Honor. This was all  
8 excluded.

9 MR. MONTOYA: It was not excluded. Your Honor gave a  
10 limiting instruction which still holds.  
02:41PM

11 THE COURT: I'm not clear what you are referring to.  
12 Which exhibits?

13 MR. MONTOYA: Your Honor, this would be plaintiffs'  
14 Exhibit Number 2, the motion to remand that convinced Bill  
15 Montgomery.  
02:41PM

16 THE COURT: Okay. The limiting instruction I gave was  
17 that the jury could read that to see what was presented as  
18 grounds to remand the case but that the numerous exhibits  
19 therein were not admitted for the truth of the --

20 MR. MONTOYA: That's true.  
02:41PM

21 THE COURT: -- and therefore, the argument -- the  
22 objection is sustained. The argument is stricken unless it's  
23 grounded in some other admissible evidence.

24 MR. MONTOYA: Well, yes, Your Honor. It's grounded in  
25 this exhibit which was admitted pursuant to stipulation.  
02:41PM

1           THE COURT: That's good enough.

2           MR. MONTOYA: All you have got to do is you don't have  
3 to be a rocket scientist to figure this graph out. Do you  
4 remember Steinberg, remember I took her through each numeral  
5 for the first few days of the SRP records and I went degree by  
6 degree with her? I did that on purpose because I wanted you to  
7 have confidence that these graphs are arithmetically,  
8 mathematically accurate. By the way, you don't have to be a  
9 genius to do them. The vertical line was kilowatt usage. The  
10 horizontal line was time every 15 minutes starting at 12  
11 midnight. You don't need to be a genius in order to figure  
12 that out.

02:42PM

02:42PM

13           Interestingly, do you remember -- boy, this was really  
14 irritating to me, at least, Steinberg: Oh, yeah, I remember  
15 those SRP -- the SRP data. My supervisor and I actually  
16 graphed out. Where is that graph? If she graphed it out and  
17 it showed her something other than this, why didn't the defense  
18 present it to you? Where is it? Remember I was saying, hey,  
19 where did you get the file? She got it from a computer  
20 database that I don't even have access to. She admitted that.  
21 I'm not a prosecutor. I'm not a judge. Where is that graph?  
22 Why hasn't the defense shown it to you? What are they trying  
23 to hide from you?

02:42PM

02:43PM

02:43PM

02:43PM

24           Here's something else she talked about that Trombi  
25 allegedly gave her. Do you remember she talked about another

1 chart? I couldn't really understand whether the chart reached  
2 from the jury box down to the court reporter or even further  
3 this way, but it was pretty big. Shy said she had it taped to  
4 a wall. Where is that? What does it say? If it shows  
5 something that helps their case they would have waved it in  
6 your face. You know it. Look at the team they have. Five  
7 people. Where are these documents? If they support their case  
8 they would have shown them to you. They don't. That's why  
9 they have hidden them from you. Do not trust them. Do not  
10 trust Steinberg. If Steinberg were telling you the truth,  
11 those documents would have been in front of you. She's the one  
12 who mentioned them. She's the one who says they graphed this.  
13 Then I wouldn't have to be using this graph. I'd be using her  
14 graph.

15 But I tell you, because she admitted the numbers were  
16 right, kilowatt hour by kilowatt hour, chronological hour  
17 starting from 12 midnight, every 15 minutes, these are  
18 accurate. But I tell ya, hate to say this, don't take any joy  
19 in saying this, Trombi seemed like a pretty nice lady to me but  
20 she lied. She lied when she said that showed that the A/C in  
21 the dog room was working all night.

22 But I can tell you one thing, Steinberg is a double  
23 liar, because I tell you, Steinberg was, I thought she was  
24 pretty smart. Notice how free and easily she testified to you,  
25 how she smiled? She's a very polished lawyer. She's very

02:44PM

02:44PM

02:45PM

02:45PM

02:45PM

1 polished. She is very experienced. She is very smart. But  
2 yet, like Trombi, Steinberg also testified, oh, no. These show  
3 that the A/C in the dog room was working all night. Even  
4 though Sheriff Joe says no stone will go unturned, Trombi, hey,  
5 if you didn't understand these records did you call someone  
6 from SRP to explain to you? No. Were you remiss in that?  
7 Yes. Probably. Then she later claimed she didn't know what  
8 remiss meant.

02:46PM

9 Steinberg, oh, yeah, I spoke to someone from SRP.  
10 Couldn't remember his name. Couldn't remember what he said.  
11 What Bill Montgomery read from SRP convinced him to dump the  
12 case. This convinced -- this would convince anyone that  
13 Steinberg is a liar or an idiot. This would convince anyone  
14 that Steinberg is -- that Trombi is really dumb or a liar. I  
15 don't think they are that dumb. They didn't seem dumb to me.  
16 They seemed really smart. They seemed really experienced.  
17 They seemed as if they were polished and articulate. And  
18 certainly, their lawyers aren't claiming that they are dumb.

02:47PM

19 Remember, their lawyers are claiming that they did an  
20 excellent job and that they are competent professionals.  
21 That's why you have to conclude they are liars. Because if, in  
22 fact, they are dumb and they just didn't understand this stuff,  
23 their lawyers would have said, hey, they made an honest  
24 mistake. Why are you making a federal case out of it? But  
25 that's not what their lawyers were telling you. They did a

02:47PM

1 competent, excellent investigation. And that's not true. That  
2 is not true at all.

3 Now, what did this do? Then another thing, Trombi,  
4 hey, Trombi, were you influenced by what Sheriff Joe did? Oh,  
5 no. Let me tell you something. When your boss gets in front  
6 of the world, just think of it. We have all had bosses. When  
7 your boss gets in front of the world and says something is  
8 scarlet red, do you really want to prove your boss wrong by  
9 telling the world that it's baby blue? When Sheriff Joe really  
10 went on a limb when he said he was very confident that he had  
11 the proper evidence for 21 felony counts, do you think that  
12 Trombi wanted the limb to break so Sheriff Joe would fall on  
13 his face? No way. Who would want to make their boss look like  
14 a fool that way? That's not what good team players do. And  
15 Trombi was part of a team with Sheriff Joe, because they  
16 repeatedly met regarding the case more than any other case.

02:48PM

02:48PM

02:49PM

02:49PM

02:50PM

17 Now, so you can't believe Sheriff Joe, Steinberg, or  
18 Trombi, because Sheriff Joe didn't know anything other than his  
19 parade of crimes, his rhetorical parade of the crimes my  
20 clients allegedly committed and he had no facts to support.  
21 Trombi and Steinberg insult your intelligence by claiming that  
22 this SRP data shows the air conditioner in the dog room was  
23 working all night. That is an insult, I submit, to your  
24 intelligence. But it's compounded because another lie that  
25 Trombi told Steinberg and Steinberg repeated to the Grand Jury,

1 and then Steinberg double downed on and repeated to you, was  
2 what Hogge's report said. So it's not only they are lying  
3 about the SRP records but they are also lying about the Hogge  
4 report.

5 Now, this is super important. This is the summary of 02:50PM

6 Mr. Hogge. First of all, do you remember when Mr. Hogge  
7 volunteered that that was the dirtiest filter he had ever seen  
8 there at the Appleby home of the Hughes? He didn't say that in  
9 his report, but he blurted it out to you as fast as he could  
10 because he's biased. But he also concluded in his summary that 02:50PM

11 a plugged filter will cause the internal filter to freeze and  
12 render the A/C completely ineffective. Now, this shows that  
13 Steinberg lied to you. Do you remember when I asked her, hey  
14 you have an A/C at your house? Then she smiled at you and said

15 she actually had two, like the Hugheses, one A/C for one side,  
16 one for the other side. I asked her, what is the purpose of  
17 the A/C in the hot Arizona summer, June? She said to cool the

18 house. Well, if your A/C wasn't blowing out cool area in June  
19 in the summer in Phoenix, would you say it was working? She  
20 said no. Then when I asked her, hey, do you think the Grand 02:51PM

21 Jury probably had the same definition of working that you do?

22 She said yes. Yet she continued to say that Hogge said the A/C  
23 was working all night in the dog room. That's not what this  
24 says. It says, and I'm not making this up, very likely, the  
25 unit completely ineffective. Hogge seemed like a nice guy to 02:52PM

1 me, but I'll tell ya, he ain't much of a scientist. Because I  
2 asked him some questions and the answers that he gave me were  
3 very, very problematic.

4 First of all, it's funny. Hogge is supposed to be the  
5 expert regarding A/Cs but he says in his report technical  
6 consultant Ron Ballard inspected the system that served the  
7 west side of the house. If he really were the expert, why  
8 didn't he do it himself? Why did he bring this Ballard guy?

02:52PM

9 And remember Ballard, his resume. He's -- and hey, my mom was  
10 a teacher, so I'm not cutting down teachers. He had a Bachelor  
11 of Science in elementary ed, a master of science in elementary  
12 ed. He's not an engineer. But do you remember when I also  
13 asked him about how much air was getting into the dog room and  
14 I asked him, well, how many, you know, how much is this amount  
15 regarding the airflow? And he said he didn't know. Remember  
16 when they measured, yeah, there it is. Thank you, God. I  
17 found it. Cubic feet per minute. With the doors open, the  
18 amount of air rushed into the dog room was 262 with both doors  
19 open. Both doors open, 262. Come on. That means the air is  
20 flowing through there freely. With the doors closed, it didn't  
21 go down to nothing, like an airtight room would go. Still 119  
22 cubic feet of air per minute. 119 cubic feet of air per minute  
23 was being pushed into that dog room.

02:53PM

02:53PM

24 And I asked him, hey, listen, was that enough for the  
25 dogs? And he didn't know. Of course he didn't know. I asked  
02:54PM

1 him, are you an atmospheric scientist? No. Are you a  
2 veterinarian? No. Are you a biologist? No. I'm telling you,  
3 this is a biased report because these two guys rendered all  
4 kinds of opinions that they were not qualified to render. I  
5 tell ya, they blurted out things that weren't even true that  
6 they never said before just to prejudice you. I challenge you.  
7 Read this report. It's Exhibit 30P. Look for it in there to  
8 see if it analyzes the SRP data. You will find that it  
9 doesn't. But I tell ya, Hogge, as soon as he can blurt out,  
10 oh, if, in fact, the coil was frozen it would use more  
11 electricity. He blurted that out. That's not in his report.  
12 That's not what he said here.

13 MR. LEONARD: Your Honor --

14 MR. MONTOYA: Nevertheless, he blurted it out.

15 MR. LEONARD: I object to that. That was a response  
16 to the Court's question of Mr. Hogge.

17 MR. MONTOYA: So what?

18 THE COURT: The jury can draw on its memory as to  
19 whether he testified to that. Overruled.

20 MR. MONTOYA: I admit that. That was in response to  
21 the Court's question. It wasn't in his report and he blurted  
22 it out. And there's no -- and it appears to -- how could he  
23 know that without looking at the SRP records? He made this  
24 report without looking at the SRP records. Look in this  
25 report. He doesn't talk about the SRP records once. Why did

02:55PM

02:55PM

02:55PM

02:56PM

02:56PM

1 he render a report without looking at the SRP records, without  
2 looking at the data first? That's why I don't trust his  
3 report. Because a scientist -- and engineers are scientists.  
4 First get all the facts, then render the decision. First  
5 collect the data and then render the decision. That wasn't  
6 done in this case. That wasn't done by Hogge. That wasn't  
7 done by Steinberg. That wasn't done by Trombi. When they  
8 wanted to talk to Logan and Austin, let's talk about them a  
9 little bit, or a lot. What evidence is there that Logan Brown  
10 is a liar?

02:56PM

02:57PM

11 THE COURT: Counsel, how long do you have to go? It's  
12 been an hour.

13 MR. MONTOYA: Your Honor, I probably have another 20,  
14 25 minutes to go. I'm going to try to rush it up.

02:57PM

15 THE COURT: You are already beyond the estimate you  
16 gave me.

17 MR. MONTOYA: I apologize, Your Honor.

18 THE COURT: Make it another 15 minutes.

19 MR. MONTOYA: Understood. Thank you.

20 Logan Brown, what evidence is that she's a liar? What  
21 evidence is there that the A/C didn't break down, like she  
22 said? What evidence is there that she had no reason to believe  
23 that she was putting the dogs in harm way when she put them in  
24 the dog room? You saw her testify. She's never even received  
25 a speeding ticket. She has no history of criminality. She has

02:57PM

02:58PM

1 no history of dishonesty. Why disbelieve her? Why recommend a  
2 21-felony count indictment without even talking to her? Hey,  
3 listen, if Sheriff Joe were waving pictures of someone you knew  
4 and accusing them of felonies you would want your lawyer  
5 present before you spoke to them, too. There's nothing  
6 unreasonable about that.

02:58PM

7 Austin Flake. What evidence is there that he's a  
8 liar? He said that he went into the room. The dogs were dead.  
9 The A/C wasn't blowing. It was about 100 degrees in there.  
10 What evidence is there that he lied? He's never been accused  
11 of anything before, just like Logan. Why not take their word  
12 for it? Why not presume them innocent until there's evidence  
13 that they are guilty? And, in fact, the objective evidence is  
14 that they are telling the truth. This pretty much fits, these  
15 lines fit that the A/C stopped in the dog room.

02:58PM

16 Look, it also fits just like Logan and Austin said. 6  
17 a.m. in the morning they turned off all the electricity in the  
18 house. The objective evidence supported what they said. Their  
19 very lives supported what they said. Why wouldn't these  
20 powerful law enforcement officers, these government officials  
21 listen. There was no hurry. No bomb was about to explode. I  
22 understand, terrorist has a bomb that's going to explode you  
23 have got to do something quick. That's not true in this case.  
24 Why didn't they believe them? Why are they continuing to lie?  
25 Steinberg, I can tell you why she would lie, or contort her

02:59PM

02:59PM

03:00PM

1 brain in an indefensible way, because if you know someone lies  
2 to a Grand Jury and you are a lawyer, boy, I will tell you,  
3 that would hurt. If you -- hey. Let me tell you something.  
4 Lawyers are super busy. Remember I asked her how many cases  
5 she had and she couldn't tell me, but she told me she was 03:00PM  
6 working really hard. Remember I asked her how much time she  
7 had spent on this and she couldn't tell me. She could tell me  
8 that it wasn't full time, but she couldn't tell me how much  
9 time she spent. You know what probably happened? Happens all  
10 the time. The lawyers in the room know this, and other people 03:00PM  
11 know this, too. Sometimes you get too swamped to do your own  
12 work so you rely on what your assistant tells you on the way to  
13 the Grand Jury room. That's why Steinberg parroted everything  
14 that Trombi said, because that's where she got her information  
15 from. She admitted that. She got all of her information from 03:01PM  
16 Trombi. Some of it was false. It was submitted to the Grand  
17 Jury. And guess what happened? Bill Montgomery got the  
18 defense motion, Exhibit 2. And finally, finally a government  
19 official, and that's Exhibit 13, finally a government  
20 official -- I see it -- had some courage to look at the facts. 03:01PM  
21 And what did he do? After thoroughly reviewing the records and  
22 fairly considering the points raised in defense motions, the  
23 theory of the case initially presented to the Grand Jury did  
24 not take into account the possibility that there were issues  
25 with the air conditioning unit. 03:02PM

1           And what did the defense motion say? Read it. The  
2 A/C broke. The evidence demonstrates it. Then Trombi lied  
3 about it to back up her boss. And then there was an  
4 indictment. Let's talk about the indictment. The indictment  
5 was devastating. Imagine being indicted for 21 felonies when  
6 you are 20 and 21 years old. That's got to knock your spine  
7 right out of your body. Is there any doubt that anyone would  
8 be depressed by that; that anyone would be devastated by that;  
9 that anyone's world would be rocked by that? Is there any  
10 surprise that for the first time in Austin's life he's on an  
11 anti-depressant, he's on anti-anxiety medication? His dad is a  
12 famous guy. His family is dragged into the press. Is there  
13 any doubt that that would ruin your emotional life? Both of  
14 his parents went to BYU. He was proud to be going there.  
15 Honor hold, can't take any more courses, has to come back to  
16 Arizona in humiliation.

17           Logan testified, hey, she did have some anxiety when  
18 she was in high school. She overcame it and gave up that  
19 medication while in college after this happened. She's back on  
20 it. Do you remember when Mr. Hiller -- I'm glad he did that.  
21 I didn't have time to. He went to her deposition where Logan  
22 testified that she cried all night, had these panic attacks.  
23 Was there any doubt that happened? For the first time in her  
24 life, Logan, who never had a speeding ticket, fails in school.  
25 That was devastating to them. There's no evidence to the

03:02PM

03:03PM

03:03PM

03:03PM

03:04PM

1 contrary. It would be devastating to anyone. That's why  
2 Trombi can't be wrong. That's why Arpaio can't be wrong.  
3 That's why Steinberg can't be wrong. But they were wrong. And  
4 the depth of their error is revealed by the fact that they  
5 won't even admit it to this day.

03:04PM

6 I'm going to talk briefly about the jury instructions.  
7 Hey, this is an important one. There we go. You have to  
8 decide this case based on the evidence. Where's the evidence  
9 that they did anything wrong? You know what's really ironic?  
10 All the talk about the A/C unit, whether it was on or off,  
11 Trombi admitted it wasn't their problem in the first place. So  
12 even if it were on, so what? They weren't responsible for it.  
13 Steinberg admitted that, too.

03:05PM

14 Now, Sheriff Joe definitely had a desire for the  
15 proceedings to be initiated. He got on television for 22  
16 minutes, saying he had the proper evidence and we're  
17 recommending it. Trombi hand-walked her recommendation to  
18 Steinberg. Steinberg testified, yeah, Trombi wanted me to do  
19 it. The fact that Arpaio and Trombi wanted the prosecution is  
20 best evidence, perhaps, by the fact that after it was dumped by  
21 Bill Montgomery, once again, Arpaio is back in the news urging  
22 that it be filed. Trombi, her indictment's dumped. She  
23 lobbies Steinberg's boss to reinstate it unsuccessfully. They  
24 definitely wanted it.

03:06PM

25 In considering whether or not there was an independent

03:06PM

1 decision to prosecute, these instructions also say you should  
2 consider whether or not the prosecutor withdrew the prosecution  
3 because the defendant failed to present facts.

4 THE COURT: It says you may consider.

5 MR. MONTOYA: May consider. That's correct, Your 03:06PM  
6 Honor. And I have very little time, so you know -- you can  
7 read these instructions for yourself. And the judge is right.  
8 It does say "may." But I tell you, Bill Montgomery's decision  
9 to withdraw the indictment is super telling, and it shows that  
10 he had no confidence in what Steinberg did, in what Trombi 03:07PM  
11 said.

12 And remember when considering whether or not Steinberg  
13 and Trombi -- or Steinberg exercised independent judgment,  
14 that's not our burden of proof. They have to prove that by a  
15 preponderance of the evidence. And the only evidence that they 03:07PM  
16 have that Steinberg exercised independent judgment is Trombi  
17 and Steinberg. Do not believe them. They are the ones who  
18 tell you that this shows that the A/C in the dog room was  
19 working all night. They are the ones who tell you that a  
20 frozen A/C that is rendered completely ineffective is still 03:08PM  
21 working. Yeah, just because you can turn your engine over but  
22 it doesn't move, oh, that means your car is still working, sir.  
23 Yeah, right. Ma'am, your car is still working. The engine is  
24 on. It won't move, but it still works.

25 How were my clients hurt? We have discussed that very 03:08PM

1 badly. Here's the form of verdict. This is the form that you  
2 use to actually render your decision in this case. Here's what  
3 you need to do with it. You need to rule unanimously in favor  
4 of the plaintiffs. Now, how much you award them, I don't know.  
5 That's your job. I do not know how much you should award them. 03:08PM  
6 My only suggestion in that regard is make it an amount that  
7 doesn't trivialize what they suffered, and make it an amount  
8 that the defendants and Sheriff Arpaio, wherever he is, doesn't  
9 laugh about, oh, yeah. It was nothing. No big deal. Got away  
10 with it. It shouldn't be a trivial amount. It should be an 03:09PM  
11 amount that reflects the severity of the emotional trauma that  
12 my clients suffered through no fault of their own.

13 You know, I tell you, when I was starting my legal  
14 career I went to a judge. He was really smart. He's retired  
15 now. And he told me -- and I asked him for advice, because I'm 03:09PM  
16 kind of naive. And I said do you have any advice for me,  
17 Judge, going out there into the real world? You know what he  
18 told me? No good deed goes unpunished. I will tell you, I  
19 thought he was cynical by telling me that and I was  
20 disappointed that that was his advice. But the only thing that 03:10PM  
21 these kids could have done to avoid what happened to them is  
22 told Logan's parents, no. No, we can't help you mom and dad  
23 because something might happen. That's all they could have  
24 done to avoid this. Nothing had ever happened to those dogs  
25 before. There's no evidence that anything happened to those 03:10PM

1 dogs since. They did nothing wrong.

2 Did anyone -- and I'm going to shut up and sit down.

3 Did anyone apologize to them? Did anyone say, hey, we made a

4 mistake. Remember that saying, even a dog knows the difference

5 between being kicked and tripped over? It's a lot harder

03:10PM

6 when -- the hit is a lot harder, the pain is a lot more intense

7 when you are kicked. When it's coupled with an apology, hey,

8 listen, I didn't mean to kick you. I tripped over you. That

9 makes it easier to handle. But was there any apology from Joe,

03:11PM

10 Sheriff Joe? Was there any apology from Detective Trombi? She

11 would have done nothing differently. Was there any recognition

12 of responsibility from Steinberg? No. I think I did

13 everything right. Are you embarrassed that the only indictment

14 that you have ever rendered that's been thrown out was thrown

15 out and ruled by the judge to lack probable cause? Are you

03:11PM

16 embarrassed by that? No. How credible is that, that a lawyer

17 would not be embarrassed when her indictment is thrown out by

18 her boss and that when a federal judge said that her indictment

19 is not supported by probable cause. How believable is a

20 witness who would testify to that?

03:11PM

21 Thank you.

22 THE COURT: All right. We'll take a short recess so

23 everyone can be fresh for Mr. Leonard's argument. We'll be in

24 recess until 3:30.

25 All rise for the jury.

03:12PM

1 (Jury out at 3:12 p.m.)

2 THE COURT: The record will show the absence of the  
3 jury.

4 Mr. Montoya, you went way over estimate. We had to  
5 take a break for the reporter. You took an hour and 40 minutes  
6 I couldn't take it in the middle of your closing. It's not  
7 fair to the other side. So that's why I had to set the limit.  
8 Well beyond the estimate you gave me.

03:12PM

9 MR. MONTOYA: It is, Your Honor, and I'm sorry.

03:12PM

10 THE COURT: Well --

11 MR. MONTOYA: I was doing the best I could rushing  
12 through it.

13 THE COURT: I always take a break before the next  
14 lawyer so he can have fresh attention from the jury.

03:13PM

15 MR. MONTOYA: And, Your Honor, we have been waiting a  
16 long time for this. And you know my clients have a lot at  
17 stake.

03:13PM

18 THE COURT: I know, but shorter arguments are better.

03:13PM

19 MR. MONTOYA: I think you are right, Your Honor. I  
20 will take that to heart.

21 MR. LEONARD: Your Honor.

22 THE COURT: Yes.

23 MR. LEONARD: Mr. Montoya, I believe, told the jury  
24 that they ought to make an award to send a message which is  
25 clearly --

03:13PM

1           THE COURT: I was listening for that and I didn't  
2 think he said that. He was telling them not to be trivial. I  
3 don't think he crossed over that line.

4           MR. MONTOYA: I didn't, Your Honor. Actually, there's  
5 a Supreme Court opinion regarding it that I think demonstrates  
6 what I did is appropriate as our own Justice Sandra Day  
7 O'Connor has observed.

03:13PM

8           THE COURT: I'm not worrying about that. I'm worried  
9 about our law. I was aware of the boundary and I think you  
10 stopped short of it.

03:13PM

11           MR. MONTOYA: Thank you.

12           (Recess from 3:13 p.m. until 3:31 p.m.)

13           THE COURT: Please be seated. The record will show  
14 the presence of counsel, the parties, and the jury.

03:31PM

15           Mr. Leonard, you may proceed.

16           MR. LEONARD: Thank you, Your Honor. Good afternoon.

17           You know, I don't know -- well, the lawyers among you  
18 probably know this. But I don't know if you know how  
19 frustrated and antsy we lawyers get. You know, we get to speak  
20 to you briefly at the beginning of a case and then we sit and  
21 listen and ask questions and listen to others ask questions and  
22 don't get to talk with you until now. And we want to, you  
23 know, no. I have got to tell them this. I want them to know  
24 this. I want to tell them that. And we can't do it. But this  
25 is an opportunity we have, and that I have, and I'm happy to

03:32PM

03:32PM

1 have, to talk to you about what you heard over the past several  
2 days.

3           Couple of things that Mr. Montoya told you that I want  
4 to tell you I totally agree with. I totally agree with his  
5 telling you that we are fortunate to have the kind of system of  
6 justice that we have in this country. And it's -- I don't know  
7 if it's a rarity, but it's certainly not typical. And you all  
8 are and have been a part of that. And if somebody who wants to  
9 file a lawsuit, as the plaintiffs have in this case, they are  
10 perfectly entitled to do it. And it works its way through the  
11 justice system, and the result is what the result is. I agree  
12 with Mr. Montoya that everybody has a right to sue the  
13 government. You are the government. You have a right to sue  
14 the government.

03:32PM

03:33PM

03:33PM

03:34PM

03:34PM

03:34PM

15           I agree with Mr. Montoya that we ought to be focusing  
16 in this case on the real issues. I absolutely agree with him  
17 when he tells you that. Where I disagree with him is he has a  
18 very different view of what the real issues are. And I'm going  
19 to try to briefly, I hope, tell you what we think the real  
20 issues are.

21           First of all, I'm not going to attack anybody. Mr.  
22 Montoya told you that Marie Trombi is a liar; that she's either  
23 dumb or a liar. He told you that Shawn Steinberg, the  
24 prosecutor, is a double liar, she's either a liar or an idiot;  
25 that Mr. Hogge is biased; that -- I don't know why he didn't

1 mention Dr. Mangone. We're going to talk about Dr. Mangone and  
2 his conclusions. I guess I'm thankful that he didn't attack  
3 Dr. Mangone.

4 So you have heard Mr. Montoya tell you why he thinks  
5 you, the jury, ought to determine that Maricopa County should  
6 pay the plaintiffs some amount of money. I'm going to try to,  
7 and I hope to, tell you why we think that shouldn't happen.  
03:35PM

8 First of all, to repeat a preliminary but really  
9 important point that I made when I spoke to you in our opening  
10 statement, and what the judge has instructed you, this case is  
11 not about personalities, popularity contests, who has more  
12 publicity than somebody else. It's a claim about a case, a  
13 claim of malicious prosecution. That has a very specific  
14 meaning, and I hope in a few minutes to talk to you about more  
15 of that meaning than you heard in Mr. Montoya's argument.  
03:35PM

16 It's a claim about malicious prosecution; not about  
17 whether a crime was committed but a claim of malicious  
18 prosecution, which has very specific requirements for which you  
19 are charged with considering the evidence, the actual evidence.  
20 Not conjecture, not guess work, not speculation but the  
21 evidence that you heard. And the evidence that you heard is  
22 evidence that you can and should consider.  
03:36PM

23 So when I talked to you last, I think it was last  
24 Tuesday, here's what I suggested to you the evidence would  
25 show. Because you are certainly entitled to take what each of  
03:37PM

1 us said in our opening statements and to ask yourselves, hey,  
2 did this get demonstrated? So I think what I suggested to you  
3 the evidence would show is that Austin and Logan Flake assumed  
4 responsibility for at least 28 dogs at a kennel business being  
5 run by Ms. Flake, now Ms. Brown's, parents. On the night of  
03:37PM  
6 June 19th of 2014, those dogs were placed in a 9 by 12 room  
7 that was too small and totally inadequate. And, by the way, as  
8 you saw, we're talking about a room that is maybe the jury box  
9 up until the water pitcher and almost back from the front of  
10 the box to the wall. 28 dogs, including some big heavy dogs.  
03:38PM

11 I told you that we would show that 28 dogs died while  
12 they were being cared for by the plaintiffs; that MCSO, the  
13 sheriff's office, was not called right away, but there was  
14 significant publicity about the incident by the press and on  
15 social media before there were any kinds of press releases from  
16 MCSO; that MCSO's animal cruelty unit conducted a pretty  
17 thorough investigation. Exhibit 30, which you will be happy to  
18 know you are not going to have to take with you into the jury  
19 room, is a copy, was identified by Detective Trombi, is a copy  
20 of the MCSO investigative file.  
03:39PM

21 I told you that Detective Trombi and MCSO believed  
22 that the charges were supported by the evidence that was  
23 uncovered. I told you that then Sheriff Arpaio didn't  
24 interfere with the investigation; that MCSO and Sheriff Arpaio  
25 made public announcements that were appropriate to the case;  
03:39PM

1 that he, in particular, relied on the deputies in the animal  
2 cruelty unit to reach its conclusions, didn't interfere with  
3 those conclusions, didn't tell him what those conclusions  
4 should be; that the MCAO prosecutor in charge of the case  
5 reviewed the file in detail, in full, with all of the  
6 information; that she was aware then of no information that was  
7 withheld. It's all in there. She was aware then of nothing  
8 that was misrepresented to her. She is aware today of nothing  
9 that was withheld. She is aware today of nothing that was  
10 misrepresented to her.

03:40PM

11           She was not pressured by MCSO to pursue a prosecution.  
12 She wasn't mislead by MCSO as to the facts and the evidence and  
13 that the County Attorney's Office made its own independent  
14 decision that the evidence met their charging standards.

15 Sheriff's office doesn't have charging standards. They are not  
16 a prosecuting agency. They do an investigation. Ms. Steinberg  
17 testified that she believed that MCAO's charging standards were  
18 met, that there was not only a reasonable likelihood of  
19 conviction but she was more convinced than that.

03:40PM

20           So that's what I told you last Tuesday, and I told you  
21 that kind of the nutshell summary was sheriff's office  
22 investigated the case, turned its investigations and  
23 recommendations over to the prosecutors at the county  
24 attorney's office, the county attorney's office did its own  
25 analysis of the case, made its own independent determination of

03:41PM

03:41PM

1 whether or not they should pursue a prosecution.

2 So that's what I told you last week you would hear. I  
3 think that's what you did hear. So let me try to review,  
4 briefly, I hope, the evidence. The judge has instructed you  
5 that in order to find malicious prosecution, and again, I hate  
6 to keep repeating it, but it's the only issue in this case,  
7 malicious prosecution, you would have to find that the  
8 defendant initiated or took an active part in the prosecution  
9 of the criminal action. The defendant, not being the county  
10 attorney's office but being the sheriff and the county, 03:42PM  
11 initiated or took an active part in the prosecution.

12 The judge has told you that the defendant initiated or  
13 took an active part in the prosecution if one of two things  
14 happened: One, and Mr. Montoya read you and showed you a part  
15 of this. Maybe I will put it up here. The part Mr. Montoya 03:43PM  
16 read you was, the defendant initiated or took an active part in  
17 the prosecution if his desire to have the proceedings  
18 initiated. I should -- I think he paraphrased, told you it was  
19 the sheriff's desire to have the proceedings initiated.

20 Well, Shawn Steinberg, the prosecutor, told you that 03:44PM  
21 police agencies, typically, they think they developed a good  
22 case, they turn it over, they would like to have it prosecuted.  
23 But that's not what the instruction is, and that's not what the  
24 law is. If his desire to have the proceedings initiated  
25 expressed by direction, request, or pressure of any kind was 03:44PM

1 the determining factor in the prosecutor's decision to commence  
2 prosecution, that's one prong. They would have to show that  
3 MCSO's desire to have the proceedings initiated expressed by  
4 direction, request, or pressure of any kind was the determining  
5 factor in the prosecutor's decision to commence the  
6 prosecution. And I will come back to that, determining factor.  
7 Or, the defendant knowingly furnished false information or  
8 materially incomplete information to the prosecutor.

03:45PM

9 Now, the judge has also instructed you that the  
10 defendants' desire to have the proceedings initiated was not  
11 the determining factor in the prosecutor's decision to commence  
12 the prosecution if the defendant made full and truthful  
13 disclosure of all material and relevant facts known to him and  
14 the prosecutor made an independent decision to prosecute.

03:45PM

15 So with respect to Sheriff Arpaio, the evidence says,  
16 the evidence has told you that he didn't sign off on the  
17 charging recommendation, the submittal to the county attorney's  
18 office. He didn't approve or communicate the charging  
19 recommendation. He didn't speak with the county attorney's  
20 office about it. That was handled at, I hate to say a lower  
21 level, but it was, in fact, a lower level. It was submitted by  
22 Detective Trombi on August 25th of 2014. It was signed off on  
23 by Sergeant -- her sergeant, Sergeant Lafko.

03:46PM

24 And, you know, Mr. Montoya told you, I'm going to try  
25 not to get diverted on these things. But Mr. Montoya told you,

03:46PM

1 oh, she didn't know. She denied Sheriff Arpaio was her boss.  
2 No, she didn't deny it. The question was asked who her boss  
3 was. She tried to describe there's a hierarchy. There's her  
4 Sergeant Lafko who signed off on the recommendation. There's a  
5 lieutenant. Yeah, ultimately Mr. Montoya pursued her,  
6 ultimately, I guess the sheriff is the boss of everybody at  
7 MCSO.

03:47PM

8 Mr. Montoya also told you that Detective Trombi didn't  
9 even know the statute. She is sitting there in the witness  
10 box. She's asked about the statute, and she says, can I see a  
11 copy of it? I would do the same thing. She's not a lawyer.  
12 Lawyers don't memorize statutes. She has to see a copy of it.  
13 Nothing out of line about that. Doesn't make her a liar.  
14 Doesn't make her dumb. Makes her cautious.

03:47PM

15 So is there any evidence that the sheriff pressured  
16 deputies to come to any particular result? No. Now, Mr.  
17 Montoya argued to you that, yeah, what about that August 22nd  
18 press conference? I'm sorry, it's not August 22nd. I get the  
19 22s confused. It was a 22-page transcript of a September, I  
20 think, 9 press conference, when the sheriff says, I think we've  
21 got a good case. He thought they had a good case. Here's the  
22 thing about that, though. That was two weeks after the  
23 submittal had been made. It couldn't have pressured Detective  
24 Trombi to submit anything because the submittal to the county  
25 attorney's office had already been made on August 25th.

03:48PM

03:48PM

03:48PM

03:48PM

1           Mr. Montoya told you that the sheriff was out at the  
2 house and couldn't identify any police -- said he wasn't doing  
3 any police work but then they criticized him for not doing any  
4 police work. He was there supporting his deputies. Okay. So  
5 what?

03:49PM

6           So the investigation is done. It includes work done  
7 by Mr. Hogge with assistance, yes, assistance from Ron Ballard  
8 who, while he may not have -- whose field is air conditioning,  
9 and his background may have been in education, so what? He had  
10 years of experience in air conditioning and there was no  
11 effective challenge to anything he came up with, anything of  
12 his that was included in the report. But they engaged Mr.  
13 Hogge to investigate the claim that dogs had chewed through the  
14 wires. That was the story that was given to the Maricopa  
15 County Sheriff's Office. The dogs chewed through the wires.  
16 That's why he was brought out. Did he not look at the SRP  
17 data? No. The SRP data hadn't been provided until after he  
18 did his report.

03:50PM

19           Maricopa County Sheriff's Office engaged Dr. Mangone.  
20 His report is included in the 2,000 or so pages. Maricopa  
21 County Sheriff's Office itself subpoenaed the SRP data. They  
22 weren't running away from the SRP data. And by the way, all  
23 this stuff about where are these charts and all of that, nobody  
24 is questioning the SRP data. It is what it is. Maricopa  
25 County Sheriff's Office subpoenaed that data. Now, when he did

03:50PM

03:51PM

1 his report Mr. Hogge didn't have it, again, because it hadn't  
2 been received at that point. But they did acquire the data.

3 So what information was provided by MCSO to the county  
4 attorney's office? Because that's really what we're talking  
5 about here. Did MCSO mislead the prosecutor? Did they fail to 03:51PM  
6 give the prosecutor full information? Did they hide  
7 information from the prosecutor? That's what this is all  
8 about. And the answer is, no, they didn't.

9 And, by the way, a lot of talk about the Grand Jury  
10 and what was said to the Grand Jury and all of that, as the 03:52PM  
11 instructions tell you, that's not the issue. The issue is what  
12 was provided to the prosecutor. And I will get to that in a  
13 minute. Sometimes I say I'm going to get to that in a minute.  
14 I have too many things I am going to get to in a minute, but I  
15 will try. 03:52PM

16 So MCSO, the sheriff's office, submits its findings,  
17 its report, its recommendations to the Maricopa County  
18 Attorney's Office. The submission quotes the Hogge report.  
19 Let's take a look at the conclusions of the Hogge report. I  
20 believe that's 30P. And I think it's 30P, Page 26. I say this 03:53PM  
21 is their conclusions, because it's called conclusion. Mr.  
22 Hogge concludes that the reported damage to the circuit caused  
23 by the dog chewing on the Romex, the cable, could not have  
24 possibly caused any interruption of the west HVAC system  
25 operation. 03:53PM

1           Why does he say that? He says that because that's  
2 really what he was hired to do. That was the pending story.  
3 Then he says the west HVAC system was wholly inadequate for  
4 this type of utilization of the dog room. This inadequate  
5 condition was exacerbated by the airflow limitations with the  
6 room, sealed room. And the fact that the HVA system was  
7 neglected as to maintenance, including the basic requirement of  
8 changing the filter. Those were his conclusions. One, dog  
9 chewing through the cable couldn't have caused the unit to go  
10 out. It wasn't even connected to that unit. And two, the west  
11 HVAC system was wholly inadequate to use in that room, that 9  
12 by 12 sealed room. That was included in the report, in the  
13 investigative report that was submitted to the county  
14 attorney's office.

15           Also included in the report that was submitted to the  
16 county attorney's office, Dr. Mangone's report, his study and  
17 report. Let's take a quick look at that. That's Exhibit 30I,  
18 Page 004. I'm not going to -- I know that big paragraph before  
19 the end of the page is his analysis of oxygen usage and  
20 requirements and things like that. I'm not going to torture  
21 you with reading through that. But I will point to something  
22 in the next paragraph where he says it can, therefore, be  
23 concluded that the deaths of the dogs were the direct result of  
24 being placed into such overcrowded conditions.

25           Now, he told that to MCSO. He said that. That was

1 his report. They didn't tell him to say that. That was his  
2 conclusion. Over on the next page, he says in the middle  
3 paragraph, no reasonable or prudent individual would deem it  
4 reasonable to house that number of dogs in a room of the  
5 measured size, especially in light of the fact that there were  
6 exposed wires in the room. Whether there were or not exposed  
7 wires in the room I'm not sure anybody knows. But he says no  
8 reasonable or prudent individual would deem it reasonable to  
9 house that number of dogs in a room of the measured size.

03:56PM

10 So Mr. Hogge concludes that the room was inadequate.

03:57PM

11 Dr. Mangone concludes that the room was inadequate, regardless  
12 of the air conditioning. And that's why the air conditioning  
13 issue becomes somewhat of a side show, a red herring. Because  
14 the room was inadequate no matter what. The Hogge report  
15 supports that. The Mangone report supports that. The fact  
16 that 21 dogs died supports that.

03:58PM

17 Now, plaintiffs have said, look at the Hogge report  
18 where he says it's likely that a coil froze which, again, is  
19 kind of a side issue, because the room was inadequate. But  
20 couple of comments on that. First of all, that's different.  
21 That's what plaintiffs are relying on now. Coil froze. I  
22 don't know if you all understood Mr. Hogge's discussion of what  
23 that means and the judge's questions about what that means, and  
24 I'm not sure that I do, either. But he explained or tried to  
25 explain what it means when the coil freezes. And plaintiffs

03:58PM

03:59PM

1 say, ah, you see, it was an accident, accident, that's the term  
2 they constantly use, the coil froze, the air conditioning broke  
3 down, it wasn't working. Therefore, they cannot be guilty of  
4 these crimes.

5 But when questioned, I was just going to say I don't  
6 know if you paid attention to this. Of course you paid  
7 attention to it, because you paid attention to everything. I  
8 know that. But when the judge asked him a question about that,

03:59PM

9 he explained that if the theory is that the air conditioning --

03:59PM

10 I'm sorry -- the electrical usage based on the SRP data

04:00PM

11 decreased what would happen if the coil froze is that the air

04:00PM

12 conditioning usage would go up because the motor would be

13 constantly going trying to push air through it. So you would

14 see something in the SRP data, which again, he didn't have when

04:00PM

15 he did this report. That's very, very different than what you

04:01PM

16 see on that exhibit.

04:01PM

17 Now, speaking of that exhibit, I think it's Exhibit 2

04:00PM

18 or -- I think it's part of Exhibit 2. Not sure if it was

04:00PM

19 marked also as a separate exhibit. But it is part of Exhibit

04:01PM

20 2, I think at Page 8. In an important way it doesn't make a

04:01PM

21 whole lot of sense if you are talking about the west air

04:01PM

22 conditioning unit, the one that cooled the dog room failing but

04:01PM

23 the east air conditioning unit not failing. Because if you

04:01PM

24 have, in these prior days, peaks and valleys showing supposedly

25 air conditioning going on and off, because the refrigerator

1 usage isn't going to change appreciably. Whatever else is  
2 plugged in, lights aren't going to change that much, if you  
3 have these peaks and valleys, the theory, I guess, is that  
4 reflects the air conditioning usage. Well, if this difference  
5 on the morning of June 20th is attributable to an air  
6 conditioning unit, it must be attributable to both air  
7 conditioning units, and yet the testimony is one worked and the  
8 other didn't.

04:01PM

9           So if you don't see these peaks and valleys, and has  
10 been suggested, I'm not sure to what extent the size of the  
11 chart sort of minimizes the amount of ups and downs, but it's  
12 certainly different from prior days, if that's explained by air  
13 conditioning not going on and off, it's got to be both air  
14 conditioning units, and yet the testimony is the east unit was  
15 working fine. So it doesn't really make any sense. The SRP  
16 data does not support the idea, the theory, that the west unit  
17 alone failed. It simply doesn't.

04:02PM

04:02PM

18           Mr. Hogge, who knows something about this, said he  
19 would concur with the statement. He thinks that the statement  
20 that the air conditioning was working was accurate. Now, the  
21 fact that it was working, that it did not become inoperative,  
22 that it did not fail, doesn't mean necessarily that it was  
23 going on. You may recall, if we look at a page out of Mr.  
24 Hogge's report, I think it's Exhibit 30P at Page 5, the  
25 configuration of the house and the dog room, if you recall

04:02PM

04:03PM

1 there's this 9 by 12 dog room, sealed. There is a bedroom next  
2 door. The bedroom was not occupied. There was no air return  
3 for the air conditioning in the dog room. It was in the  
4 bedroom next door. The thermostat that operated that unit was  
5 in the bedroom next door, specifically in a closet in the  
6 bedroom next door. It could easily and likely have simply,  
7 without anything wrong with the air conditioning unit, it  
8 simply didn't know it needed to turn the air conditioning on.  
9 The thermostat was set. It was a cool night. It was June but  
10 it was a cool night. The thermostat was not in the dog room,  
11 couldn't sense the temperature rising in the dog room with the  
12 28 dogs in the room using up oxygen, becoming warmer, nobody  
13 occupying the bedroom next door. As far as the thermostat  
14 knows, everything is fine, and it doesn't turn the unit on.

15 That, by the way, as opposed to the theory of coils  
16 freezing or something like that, that is consistent with the  
17 SRP data. Because it may well be that not only the west air  
18 conditioning unit but the east air conditioning unit simply  
19 didn't need to go on. Now, did Detective Trombi necessarily  
20 understand every nuance of all that? Not necessarily. Did she  
21 lie about it? No. Was she dumb? No. And that isn't the  
22 question. And I will come back to this.

23 Question is what did she communicate to the  
24 prosecutor? Did she lie to the prosecutor? Did she withhold  
25 information from the prosecutor? Whether she understood the

04:04PM

04:04PM

04:05PM

04:06PM

04:06PM

1 information or not, she told the prosecutor what information  
2 they had like in this book. Shawn Steinberg, the prosecutor,  
3 who was accused of being a double liar, or alternatively an  
4 idiot, told you she received volumes of information from MCSO.  
5 She received the entire investigative report, not bits and 04:07PM  
6 pieces of it. You know, there were excerpts from Mr. Hogge's  
7 report in the charging statement, in the submittal. There were  
8 excerpts of it. There were excerpts of Dr. Mangone's report in  
9 the submittal. But the entire report and the entire -- the  
10 entire report of Mangone, the entire report of Hogge, were all 04:07PM  
11 submitted and all of the SRP data were all submitted to the  
12 county attorney's office.

13 So Ms. Steinberg told you she received volumes of  
14 information from MCSO, including, she said, detective reports,  
15 owner's logs, contracts, photos, the Hogge report, the Mangone 04:08PM  
16 report, the SRP data. She told you also that she had questions  
17 that she wanted followed up on. She asked MCSO those  
18 questions. They responded to those questions. She was  
19 satisfied with the answers. She told you she talked with Mr.  
20 Hogge. She didn't even just read his report. She talked with 04:08PM  
21 Mr. Hogge.

22 You know, talk about -- it's been suggested that,  
23 well, she didn't spend any time on that. She had an assistant  
24 do it, something like that. That isn't what happened. That's  
25 not what happened at all. She talked to Mr. Hogge. She talked 04:08PM

1 to Dr. Mangone. She talked to SRP. She discussed the  
2 submission with a team, including several levels up to William  
3 Montgomery, the county attorney. She did her own analysis.  
4 She reached her own conclusions. She and the team reached a  
5 conclusion. And again, the issue here is not whether the  
6 conclusion was right or wrong. The issue here is not whether  
7 Mr. Flake and Ms. Brown were guilty of the charges that were  
8 brought. Maricopa County Attorney's Office reached a  
9 conclusion that their charging standards were met. They  
10 thought the prosecution would be a good prosecution. They  
11 thought they could get a conviction. And I think Ms. Steinberg  
12 told you, you know, this isn't the first such proceeding that  
13 she's been involved in.

14 So back to the instructions. In order to find  
15 defendants liable for malicious prosecution, a number of things  
16 have to be proven. The defendant initiated or took active part  
17 in the prosecution; defendant acted for a primary purpose other  
18 than to bring an offender to justice, and, by the way, there 's  
19 no evidence of that. Criminal action was brought without  
20 probable cause. Well, the Court has determined that there was  
21 no probable cause. We can't question that. Plaintiff was  
22 damaged by the criminal action.

23 So back to what I started talking about before, the  
24 defendant initiated or took active part in the prosecution, if  
25 one, his desire to have the proceedings initiated expressed by

04:09PM

04:10PM

04:10PM

04:11PM

04:11PM

1 direction, request, or pressure of any kind was the determining  
2 factor in the prosecutor's decision to commence the  
3 prosecution, it wasn't. Ms. Steinberg told you it wasn't. She  
4 told you they made their own decision. She said police  
5 agencies always want you to prosecute. If we concluded, she  
6 said, if we concluded that there was not basis to bring the  
7 charges, we wouldn't do it no matter who said anything; or two,  
8 he knowingly furnished false or materially incomplete  
9 information to the prosecutor. There is no evidence of that.

04:12PM

10 Asked whether she thought that anything was missing,  
11 that MCAO was misled, that material information was omitted,  
12 she said no, no, no. She -- you know, despite being accused of  
13 being a double liar or an idiot, she took responsibility for  
14 the charges. She said she didn't come here and tell you that,  
15 oh, man, I wish they had told me something else. I would have  
16 made a different decision. You know, I think they misled me.  
17 I think they lied. You know, she could easily, I suppose, have  
18 passed off responsibility to the sheriff's office. She didn't.  
19 She sat here and she told you that she and the team, up to and  
20 including William Montgomery, made the decision. They took  
21 responsibility for it.

04:12PM

22 And the next sentence, again, of the instruction, the  
23 defendants' desire to have proceedings initiated was not the  
24 determining factor in the prosecutor's decision to commence the  
25 prosecution if the defendant made full and truthful disclosure

04:13PM

04:13PM

1 of all material and relevant facts known to him and the  
2 prosecutor made an independent decision to prosecute. That is  
3 exactly what occurred. Detective Trombi told you that she knew  
4 it was the prosecutor's decision. She acknowledged that. She  
5 understood that. She thought she had a good case. She took no  
6 steps to pressure the County attorney's office before the case  
7 was presented to the Grand Jury. Did she seek an explanation  
8 after the fact? Yeah. She told you she did because she  
9 thought it was a good case, so she asked how come.

04:14PM

10 Keep in mind, though, that was after the fact. That  
11 was after the Grand Jury returned indictments. Her going to  
12 the county attorney's office saying, how come, can't possibly  
13 influence the decision to prosecute, the county attorney's  
14 decision to prosecute. It came afterwards.

04:14PM

15 Sheriff Arpaio, in the press conference from  
16 September, also made that point repeatedly. Why don't we look  
17 at Exhibit 8, starting on the first page at the bottom in the  
18 lower left-hand corner. "We turned it over to the county  
19 attorney for review, and don't forget that they had to make  
20 sure they had the proper information and evidence to  
21 prosecute." Up in the top right-hand corner, "I'm sure that  
22 that office will review the evidence and we'll see what  
23 happens. I'm very confident we have the proper evidence."  
24 That's what Mr. Montoya pointed out to you. But he then  
25 follows that with, "And, once again, the County attorney's

04:15PM

04:16PM

04:16PM

1 office will review our evidence."

2 And, by the way, the down at the top of the page in  
3 the lower right-hand corner, when Mr. Montoya suggested to you  
4 the sheriff had no idea what the issue was, notice he said,  
5 "You have to understand that 21 animals died in a 9 by 12 room,  
6 and there were others in there also. That is the crux." That  
7 is the crux.

04:17PM

8 On the next page, 002, the lower right-hand corner up  
9 at the top, "I don't think a 9 by 12 room with 28 dogs is  
10 proper shelter to begin with." Over on the next page, Page 3,  
11 top left, "But once again, it will be up to the county  
12 attorney's office to determine whether there's enough evidence  
13 for charges slash conviction."

04:17PM

14 And when asked, presumably by a reporter, "You say you  
15 are confident. Explain to us why you are so confident." He  
16 says, "Well, once again, I know my office did a thorough  
17 investigation of two months developing the case. I know as far  
18 as I'm concerned and my office is concerned, I know we did the  
19 best we could to obtain proper evidence and now it will be  
20 up -- if charges will be filed."

04:18PM

21 And then at the top right-hand corner of that page,  
22 "I'm confident in the two months it took to put the facts  
23 together, to gather the proper evidence, and now it's going to  
24 be up to the county attorney to review it and it will be up to  
25 him to file charges."

04:18PM

04:19PM

1 Referring also to the June 23rd press conference as  
2 being some sort of publicity-seeking maneuver, and that's  
3 Exhibit 4, he says, "Owners claim the air conditioning was cut  
4 off after a dog chewed through some electrical wiring." That  
5 was suspect. It wasn't true, simply wasn't true. It couldn't  
6 have been. He says, on that same page, he says, "Some owners  
7 were there when deputies arrived, all visibly upset as the  
8 kennel owners and caretakers were questioned." Yes, they were  
9 visibly upset, the owners were. They wanted an investigation.  
10 They wanted answers.

04:19PM

11 Now, a suggestion was made, not a suggestion, a  
12 statement was made to you that somehow this was an effort to  
13 tie in Senator Flake. The sheriff didn't mention Senator  
14 Flake. But before this June 23rd press release, not only had  
15 the press reported this, not only had the press reported the  
16 connection with the senator, but the senator's office had  
17 released a statement. I believe that's 47. June 22nd, the day  
18 before this first press release, "Fox 10 has learned from  
19 multiple sources the son of U.S. Senator Jeff Flake and his  
20 son's wife were in charge of caring for the 17 dogs who died at  
21 Green Acre." Senator Flake's office released the following  
22 statement: "I learned of this tragic accident yesterday. I  
23 can't imagine the devastating loss these families are  
24 experiencing. My heart goes out to the owners who lost their  
25 beloved pets." His own office released a statement making the

04:21PM

04:21PM

04:22PM

1 connection.

2 Now, the assertion that the fact that the charges were  
3 subsequently withdrawn and not re-filed proves anything, simply  
4 not the case. Let's take a look at that press release from the  
5 Maricopa County Attorney's Office, Number 13. Keep in mind,  
6 what matters for a charge of malicious prosecution against a  
7 police agency is what information they gave to the prosecutors,  
8 not what information the prosecutors decided to present to the  
9 Grand Jury. Different issue altogether.

04:22PM

10 So Mr. Montgomery says, "After thoroughly reviewing  
11 the records and fairly considering the points raised in recent  
12 defense motions, the theory of the case as originally presented  
13 to the Grand Jury," the theory of the case as originally  
14 presented to the Grand Jury, presented by the County attorney,  
15 "did not take into account the possibility there were issues  
16 with an air conditioning unit, said the Maricopa County  
17 Attorney Bill Montgomery. This could impact the Grand Jury's  
18 charging decision and how we might present a case to a trial  
19 jury."

04:23PM

20 Look carefully at what it is he said. He didn't say  
21 despite the suggestion, the implication presented to you that  
22 it was something else, he didn't say we didn't get good  
23 information from the sheriff's office. He didn't say the  
24 sheriff's office lied to us. He didn't say that the sheriff's  
25 office omitted information from its report to us. He didn't

04:23PM

04:24PM

1 say any of those things. He was talking about the county  
2 attorney's theory of the case. That doesn't create a malicious  
3 prosecution claim against the sheriff. Whatever it may mean  
4 with respect to the county attorney's office, it doesn't create  
5 a malicious prosecution claim against the sheriff.

04:25PM

6 So the publicity was heavy, intense, before Maricopa  
7 County Sheriff's Office ever said anything. It was the media,  
8 it wasn't MCSO, that linked these events to the senator. It  
9 was the media, not MCSO, that inflamed the public. Basically,  
10 MCSO communicated four times, maybe five if you want to include  
11 the thing about the searching for the missing dog: Once when  
12 the investigation began, June 23rd; once when the search  
13 warrant was executed, July something; a couple of weeks after  
14 the charging recommendation was made, September 9, I think; and  
15 after the charges were dropped, December.

04:26PM

16 And, by the way, when you keep being shown, as we have  
17 seen repeatedly through this trial, and you just were shown  
18 again, that picture of the sheriff at the June 23rd press  
19 whatever it was, holding up which has been characterized  
20 throughout the trial and today as the sheriff showing pictures  
21 of dead dogs to the media, you didn't see that in the picture.  
22 What you saw was the sheriff holding up a sheet of photos. You  
23 didn't see him show any pictures of dead dogs.

04:27PM

24 Could MCSO have, if it wanted publicity, and if it  
25 wanted to link people and things and events, could it have done

04:27PM

1 things different? Yeah. It could have arrested Mr. Flake and  
2 Ms. Brown. It could have run a continual stream of press  
3 releases. Again, there were basically four. It could have  
4 handled it a lot different, but it didn't.

5 Finally, defendants told you when they testified that 04:28PM  
6 finding the 21 dead dogs was the worst day of their lives.

7 We're not going to dispute that. That may well have been. But 04:28PM  
8 it was that event which was immediately -- first of all, there  
9 were a lot of angry people. There were a lot of press reports.

10 It's a big deal. There was a lot of publicity. That was what 04:28PM  
11 they told you was the worst day of their lives, not the  
12 recommending of the criminal charges. Not the indictment. And  
13 what made it so, I understand that, was the dogs and the  
14 reaction. There was intense reaction. They were hurt and  
15 upset by their experiences since the death of the dogs, yeah. 04:29PM

16 But that was the result of the death of the dogs. MCSO didn't  
17 cause that. Maricopa County didn't cause it. The defendants  
18 didn't cause that. They were hurt and upset because 21 dogs  
19 died on their watch and there was intense reaction to it. The  
20 media is still talking about it, yeah. I assume the media is  
21 here because of this trial. 04:30PM

22 Finally, the judge has instructed you that the only  
23 damages that could be awarded, if you decided that there was  
24 liability on the part of the defendants, would be damages --  
25 would be emotional harm and damage to reputation. I will tell 04:30PM

1 you, there's been no evidence in this case of any damage to  
2 reputation. Nobody has come in and testified that they think  
3 less of either Mr. Flake or Ms. Brown as a result of this. And  
4 if there's been anything in the media about that, again, it's  
5 been a result of the general publicity.

04:31PM

6 The critical point, were they hurt by these events, by  
7 the death of these dogs? Sure. Nobody would deny that. Have  
8 they suffered as a result? Yeah. But there's one claim and  
9 one claim only in this case, and that is malicious prosecution.  
10 And plaintiffs cannot establish malicious prosecution unless,  
11 one, defendant acted for some purpose other than to bring  
12 people they thought committed crimes to justice. And they  
13 can't establish a case for malicious prosecution unless either  
14 MCSO's desire, the sheriff's desire to have the proceedings  
15 initiated by the prosecutor was the prosecutor's determining  
16 factor; or the sheriff knowingly furnished false or materially  
17 incomplete information to the prosecutor.

04:32PM

18 None of those things occurred. And we hope that you  
19 will consider that. We know you are going to give fair review  
20 and fair consideration of the claims, of the defenses, and  
21 reach a fair result. Thank you.

04:33PM

22 THE COURT: All right. The plaintiff may give a  
23 rebuttal and then the jury will retire to deliberate.

24 MR. MONTOYA: May I have a moment, Your Honor?

25 THE COURT: Just take a minute.

04:33PM

1                   MR. MONTOYA: Jeff Leonard just told you, anything  
2 missing? It's all here. This is his exhibit, not mine. Just  
3 a couple seconds ago you saw me. I was about to give it back  
4 to him then I decided not to because he says it's all here.  
5 Nothing is missing. Where's the chart that Trombi made? Part 04:34PM  
6 of the instructions say that there has to be a full and  
7 truthful disclosure. Full and truth truthful. Mr. Leonard  
8 says this is it. Where's the chart that stretches from over  
9 there to either over there or over here? It's missing. So  
10 it's not full, which strongly suggests that it's not truthful. 04:35PM  
11                  The graph that Steinberg made. She testified she and  
12 her boss made it. Where's that? This isn't full. This is  
13 missing that, too. Suggest it's not truthful. They are hiding  
14 something from you.

15                  They keep on talking about the A/C. Oh, this doesn't 04:35PM  
16 show the A/C went out, the west A/C went out? It shows it was  
17 both -- now he's saying, for the first time, it's not in the  
18 Hogge report. It's not anywhere else. For the first time now  
19 Mr. Leonard has said, oh, the east A/C went out, too. Who  
20 testified to that? Where's the evidence that the east air 04:36PM  
21 conditioner went out too? There's no evidence of that. He  
22 just made that up. This doesn't suggest that.

23                  Notice another thing that he omitted. Another big  
24 zero. There's nothing. Remember I talked to you about Logan  
25 and Austin's credibility? Why not believe them? Hey, listen, 04:36PM

1 they say they turned off the A/C at 6, or the electricity at 6  
2 because of the sparking wire. They say that sometime after 11  
3 p.m., because that's when they went in there the last time, the  
4 A/C must have went out, must have gone out, because when they  
5 got up in the morning it was super hot in there and the dogs  
6 were dead and dying, why not believe them? They have never  
7 lied before. They have no criminal background before. This  
8 supports them. Why not believe them. Why call them liars?  
9 That's evidence of malice. Malicious prosecution. The judge  
10 has already said there wasn't any probable cause.

04:37PM

11           Here's what makes it malicious, that they suggest they  
12 are liars even though they have no evidence that they are  
13 lying. In fact, as I think everyone has to admit, all the  
14 evidence is they are telling the truth. The records indicate  
15 they are telling the truth. Hogge says that the system froze  
16 up and was rendered -- it's very likely the system was  
17 completely ineffective.

04:38PM

18           Here's something else that's kind of strange. You  
19 know, in order -- they were abusing language. Do you  
20 remember -- I remember years ago -- showing my age -- a  
21 politician said it depends what "is" is. You have heard of  
22 double speak. Oh, the A/C is working. They claim, oh, it's  
23 working. But it's frozen. The coil is frozen and it's been  
24 rendered completely ineffective. That is double speak. That's  
25 evidence of malice. The strongest evidence of malice is the

04:38PM

04:38PM

1 lack of evidence that these kids did anything wrong. The A/C  
2 went out. God, why -- the only reason we're talking about why  
3 the A/C went out is because it shows they are lying. Because  
4 Trombi already had to admit that they couldn't be held  
5 responsible for the A/C because it wasn't their house. They, 04:39PM  
6 like most, hopefully, I hope my kids want to help me if I leave  
7 town and I need them to take care of my house. That's all they  
8 did wrong. Trombi admits that. Steinberg admits that. But  
9 they are not responsible for the A/C, so why do they keep on  
10 lying about this? They are trying to cover for what they did. 04:39PM  
11 And what they did is wrong. And what they did is destructive.  
12 The Hogge report, here it is again, Page 36. That's  
13 the page that Mr. Leonard cited to you, or it's the conclusion  
14 section. Let's look at that page. Because that page, I'm very  
15 familiar with it. That page repeats what he said to begin 04:40PM  
16 with.  
17 This is the last page of the Hogge report. See  
18 conclusions, comments, his stamp. He also speaks in the second  
19 to the last page, he ends kind of where he began: A plugged  
20 return filter will cause a number of problems including the  
21 very likely condition of freezing, the interior coil freezing  
22 and rendering the unit completely ineffective. And that's  
23 exactly what he said at the beginning. But yet they tell you  
24 that this is proof that the A/C was working in the dog room all  
25 night. It's not proof of that. It's proof of the opposite. 04:41PM

1           But why are they citing this as evidence against my  
2 clients anyway? They keep on telling you about the Hogge  
3 report, the Hogge report. You know what? The Hogge report is  
4 irrelevant as to these two. Trombi admitted she wasn't blaming  
5 them for the A/C system or the ventilation system. So the       04:41PM  
6 Hogge report doesn't support any criminal charges against Logan  
7 or Austin. And that's also true. Dr. Mangone didn't testify  
8 to you. I don't know why. Hogge did. For some reason they  
9 didn't bring him. I was kind of hoping they did because I had  
10 a lot of questions for him. The judge asked a really good      04:42PM  
11 question of Trombi in reference to the Mangone report: In my  
12 opinion, the deaths were the direct result of the negligent  
13 actions of the owners of Green Acre and the caretakers that  
14 were on site the night of the accident. See that word, the  
15 result of negligent actions. Well, guess what? The judge has      04:42PM  
16 instructed you, as a matter of law in the probable cause  
17 instruction, that negligence isn't enough to support a felony.  
18 That's the reason why he said he found there was no probable  
19 cause. You know what? The best evidence of malice is the lack  
20 of evidence. Why would they prosecute someone for 21 felonies  
21 without a shred of evidence other than for publicity or perhaps  
22 Trombi's own independent agenda that she's a dog lover who  
23 takes passion in her work. Let me tell you, people who are  
24 passionate about their work, they are not the most objective  
25 judges of whether or not other people are guilty of felonies.      04:43PM

1 Now, Steinberg did testify that she spoke to her  
2 supervisors. She even testified that she spoke to Bill  
3 Montgomery. And Bill Montgomery approved his office's seeking  
4 an indictment from the Grand Jury. But do you remember I asked  
5 her, it was just yesterday, you gave him all the information he  
6 relied on when you gave the approval, right? Yes. Trombi gave  
7 the bad information to Steinberg. Steinberg gave the bad  
8 information to Montgomery. Junk in, junk out. Steinberg  
9 admitted she could indict a ham sandwich, that even a lousy  
10 prosecutor can indict a ham sandwich. They say that Bill  
11 Montgomery's dismissal was irrelevant.

12 But he also says why he dismissed or why he asked the  
13 Court. Remember the chronology of this. Logan and Austin's  
14 defense lawyer files a big old fat motion, Exhibit Number 2,  
15 with this data. And instead of responding to it, we oppose it.  
16 We don't agree with it. What does Bill Montgomery do? He  
17 files -- he directs Shawn Steinberg to file her own motion.  
18 That's Exhibit Number 12, Plaintiffs' Exhibit Number 12. Here  
19 it is. Remember that, State's Motion to Dismiss.

20 The government got the defense lawyer's motion, and  
21 instead of opposing it with qualifications, or agreeing with it  
22 with qualifications the government surrendered and actually  
23 moved the Court to dismiss signed by Shawn Steinberg. There's  
24 her electronic signature, as she admitted.

25 Now, oh, Mr. Leonard tells you, not very candidly, as

04:43PM

04:44PM

04:44PM

04:45PM

04:46PM

1 I hoped to show you, that oh, it's no big deal. It means  
2 nothing. What did he just tell you? That Montgomery's  
3 decision to dismiss wasn't a big deal. It wasn't a big deal?  
4 If it wasn't a big deal why has that never happened to  
5 Steinberg before? Guess what? It wasn't a big deal? Do you  
6 think they would agree that it wasn't a big deal? The victims  
7 of the false indictment thought its dismissal was a really big  
8 deal.

04:46PM

9 MR. LEONARD: Your Honor, that isn't what I said.

04:46PM

10 THE COURT: It's argument.

11 MR. MONTOYA: Now, here's what Bill Montgomery said,  
12 once again: "After thoroughly reviewing the records and fairly  
13 considering the points raised in recent defense motions, the  
14 theory of the case initially presented to the Grand Jury did  
15 not take into account the possibility that there were issues  
16 with the air conditioning unit." Hey, well come on. Let's  
17 take a look. Exhibit Number 2. Look at it when you go into  
18 the Grand Jury room. It looks like this. You have seen it  
19 before. Remember we were talking about Dennis Wilenchik,  
20 attorneys for Austin and Logan Flake, motion to remand the  
21 Grand Jury. Remember Trombi told you she pulled it off the  
22 internet and read it? Well, God, what are the theories in  
23 here? Here's the theory. Detective Marie Trombi not only  
24 provided false testimony to the Grand Jury twice about this  
25 under questioning by the prosecutor, but she provided false

04:47PM

04:47PM

04:47PM

04:47PM

1 testimony when a grand juror asked her about this issue  
2 directly.

3 MR. LEONARD: Your Honor --

4 MR. MONTOYA: After immediately finishing testimony.  
5 That's on Page 2 of the motion.

04:47PM

6 MR. LEONARD: Your Honor, this is a lawyer's argument  
7 in here.

8 THE COURT: That's exactly what it is and that's  
9 exactly what is permitted at this stage of the proceeding.

04:48PM

10 MR. MONTOYA: Yeah. That's what it is. That's what  
11 Bill Montgomery -- hey, listen, I'm not the one who dismissed  
12 this case. Bill Montgomery did. And I'm not the one who  
13 explained why the case was dismissed. Bill Montgomery did.

14 Not me. Don't get mad at me. I didn't do it. I'm not the  
15 county attorney. I'm not the one who identified the defense  
16 motion that in the very second page says exactly what I have  
17 been saying: Trombi lied. That's why the county attorney  
18 dismissed the case. But, yet, they tell you, it's not a big  
19 deal. You know what that is? That's kind of like, oh, the A/C

04:48PM

20 was working even though the coil was frozen and it was  
21 completely ineffective. Oh, the charges against these poor  
22 young people were dismissed voluntarily by the man in charge  
23 but it wasn't a big deal. Yeah, right. That's double speak.  
24 In order to believe them that is double speak and that shows  
25 their dishonesty betrays their malice. Sheriff Arpaio -- he

04:49PM

04:49PM

1 also told you, Mr. Leonard, just got finished telling you, oh,  
2 Sheriff Joe, he wasn't showing pictures of the dead bodies.  
3 How can he say that? This is admitted into evidence. This is  
4 Exhibit Number 18. "Then-Sheriff Arpaio holds up photos of  
5 dogs found dead at the Gilbert boarding service in June of  
6 2014." 04:49PM

7 THE COURT: Mr. Montoya, it's 10 minutes to 5, so you  
8 have 10 more minutes.

9 MR. MONTOYA: Yes. Understand. Thanks for the  
10 reminder. 04:50PM

11 "Dog deaths at Gilbert boarding site. Sheriff Arpaio  
12 holds up photos Monday, June 23rd, of dogs found dead." What's  
13 that all about? That's exactly what he did on the Monday after  
14 the dogs died. He used it as a platform for publicity without  
15 any evidence. Couldn't even specify one shred of evidence when  
16 I asked him. In his deposition, remember I said, remember in  
17 your deposition I asked you if you could give us one specific  
18 fact in support of your recommendation of 21 felonies? He said  
19 no. Then after the passage of a year I asked him again, think  
20 he would have prepared, thought maybe he would have something.  
21 No, I'm not involved in the nuts and the bolts. Hey, come on.  
22 Here's a common sense principle. If you don't know the facts,  
23 sit down and shut up and let somebody else who does know the  
24 facts speak. Don't get up there and say two young people who  
25 had never been accused of criminality in their lives, you are 04:51PM

1 very confident you have the proper evidence that they are  
2 repeated felons and not have the facts? Come on, if you are  
3 going to do that in front of the press and one of them is a  
4 senator's son and it's going to be smeared all over the  
5 internet, at least have some facts. People have cheat sheets.  
6 I have notes. Before I got up here, won't surprise you, I made  
7 notes. I made a summary to remind me. Why couldn't Sheriff  
8 Arpaio do that? Because he only wanted publicity. He used  
9 this as a publicity vehicle. That's why he had repeated press  
10 conferences. That's why he had repeated press releases.  
11 That's why he goes to speak to the press at the execution of  
12 the search warrant even though he doesn't help. This is all  
13 about publicity.

14 You know, we mentioned when we were talking to Sheriff  
15 Arpaio, former Sheriff Arpaio, that he is the former sheriff.  
16 We have a new sheriff. How many times have you seen him on TV  
17 talking about some horrible crime? I can't think of any that I  
18 have seen him on TV. I saw him on TV when he won the election,  
19 and that's the last I have seen of the guy.

20 Let me ask you this --

21 MR. LEONARD: Your Honor, there's no evidence to  
22 support that statement.

23 MR. MONTOYA: Just asking on their own experience,  
24 Your Honor.

25 THE COURT: It's borderline, but that's stricken. So

04:51PM

04:52PM

04:52PM

04:53PM

04:53PM

1 you may continue. You are not allowed to speak about your own  
2 experience or views.

3 MR. MONTOYA: Understand.

4 Scanning your experience, you can take your own  
5 experience into the jury room. And ask yourself how many times

04:53PM

6 you have seen the new sheriff saying that he has proper  
7 evidence that someone is a 21-count felon. Remember we also  
8 have chief of police if you are from Phoenix or live in the  
9 Phoenix media area. When is the last time you have seen her?

04:53PM

10 She's a tall lady. When is the last time you have seen her  
11 accusing someone of 21 felony counts? That's unique to the  
12 celebrity. Remember I asked him how many times have you been  
13 interviewed? He gave me something specific on that one, didn't  
14 he: 5,000 interviews. And he mentioned that some of them were  
15 international.

04:54PM

16 So there's no evidence. And the absence of evidence  
17 makes it malicious. The absence of evidence coupled with the  
18 constant attempt to use this as a platform for publicity makes  
19 it malicious. The judge has already said, hey, there was no  
20 probable cause. There were damages. They can't dispute there

04:54PM

21 were damages. Did they testify that the worst day of their  
22 lives was when the dogs died? Yeah, they did. They both did.  
23 Good for them. That means they put dead, innocent animals  
24 above what happened to them. That's a good thing. That  
25 actually shows that they are honest and it shows they cared

04:55PM

1 about those animals. Don't ever forget that one of those  
2 animals was Logan's family dog, Patrick. Did they think they  
3 were placing the animals in harm's way? Yeah, they wanted to  
4 kill their own dog. They thought it was safe. There's no  
5 evidence to the contrary. The independent judgment, junk in,  
6 junk out. Do you really seriously believe for a millisecond  
7 that the county attorney would have brought this before the  
8 Grand Jury without Trombi's strong recommendation that she  
9 hand-walked in there with her passion for her work? The only  
10 reason the county attorney prosecuted because this case was  
11 handed to them after an extensive investigation by the  
12 sheriff's office. That's the only reason. They would have  
13 never done it on their own. Once they found out the true facts  
14 when these two young people had to get their own lawyer, the  
15 guy in charge dismissed the case based upon the arguments of  
16 defense counsel that accused Trombi of being a liar. And guess  
17 what? If Trombi lied, Steinberg must have lied, too, because  
18 Steinberg, her testimony was the mirror image of Trombi's. She  
19 justified this the same way that Trombi did. Oh, no, this  
20 shows it was working all night. Oh, frozen doesn't mean  
21 doesn't work. It can be frozen and totally ineffective but  
22 it's still working. They said the same exact thing. That  
23 shows their bad faith and that they ought not to be believed.

24 The full and fair disclosure, we have talked about  
25 that. The foot long, several feet long graph, what did that

04:55PM

04:55PM

04:56PM

04:56PM

04:57PM

1 show? Are you curious what that showed? Are you curious about  
2 the graph that Steinberg and her boss allegedly created? Don't  
3 you wish you could see what that said? They didn't want you to  
4 see what it said so they hid it from you. But then they have  
5 the audacity to say that's a full and fair disclosure.

04:57PM

6 Remember the judge's jury instructions say that there is no  
7 independent prosecutorial defense if there wasn't a full and  
8 fair disclosure. They have admitted that there was no full and  
9 fair disclosure because they haven't produced these records to  
10 you. And you can only guess what they say.

04:58PM

11 MR. LEONARD: Your Honor.

12 THE COURT: What?

13 MR. LEONARD: This is totally unsupported.

14 THE COURT: Overruled. And one minute left.

15 MR. MONTOYA: Yes. I am going to end where I started.  
16 I have already told you what the case isn't about, because it's  
17 about the absence of evidence, the absence of a shred of  
18 evidence against these two. Now let me tell you what it is  
19 about, where I started. It's about the power of government to  
20 crush a private citizen's life. That's what this case is  
21 really about: No evidence; tons of publicity; power of the  
22 Grand Jury; indict a ham sandwich; based on no evidence;  
23 distort the evidence; lie about the evidence; crush somebody's  
24 life.

04:58PM

25 This poor kid in the suit, he still hasn't got over

04:59PM

1 this. He's still on anti-depressants and anti-anxiety  
2 medicines. And do you remember the TMS treatment that he's  
3 still on? He still hasn't graduated from college.

4 THE COURT: Your one minute is more than up.

5 MR. MONTOYA: That's what this case is about,  
6 government abuse. And here's what this case should end up --

04:59PM

7 THE COURT: Thank you, Mr. Montoya. You are finished.

8 (Excerpted proceedings concluded at 4:59 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5                   C E R T I F I C A T E  
6  
7

I, LAURIE A. ADAMS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 20th day of December,  
2017.

s/Laurie A. Adams

\_\_\_\_\_  
Laurie A. Adams, RMR, CRR